

SHACKELFORD MILLER

THE  
STATUTE LAW  
OF  
KENTUCKY;

WITH NOTES, PRÆLECTIONS, AND OBSER-  
VATIONS ON THE PUBLIC ACTS.

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IN FOUR VOLUMES.

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BY WILLIAM LITTELL, ESQ.

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*SIC VOS NON VOBIS, &c.—VIRGIL.*

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VOLUME IV.

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TO WHICH ARE ADDED,

SEVERAL APPENDICES,

CONTAINING

A REVIEW OF THE ACTS OF ASSEMBLY RELATIVE TO  
Conveyances, last Wills and Testaments, Promissory  
Notes, and the assignment of Bonds;

AN OUTLINE OF THE DUTY OF

**JUSTICES OF THE PEACE, SHERIFFS, &c.**

AND A SHORT

Dissertation on the Proceedings in Chancery against  
Absent Defendants.

TOGETHER WITH

**AN INDEX TO THE WHOLE WORK.**

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FRANKFORT, (KEN.)  
PRINTED FOR WILLIAM HUNTER,  
BY ROBERT JOHNSTON.

1814.

UNITED STATES OF AMERICA, }  
DISTRICT OF KENTUCKY, SCT. }

BE IT REMEMBERED, that on the thirteenth day of April, in the year of our Lord 1814, and in the 38th year of the Independence of the United States of America, WILLIAM HUNTER, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the following words, to wit :

“The Statute Law of Kentucky ; with notes, prælections, and observations on the  
“public acts. In four volumes. By WILLIAM LITTELL, Esq. *Sic vos non  
“vobis, &c.*—Virgil. Volume IV. To which are added, several appendices,  
“containing a review of the acts of assembly relative to conveyances, last wills  
“and testaments, promissory notes and the assignment of bonds ; an outline of  
“the duty of justices of the peace, sheriffs, &c. and a short dissertation on the  
“proceedings in chancery against absent defendants. Together with an index to  
“the whole work.”

IN CONFORMITY to the act of Congress of the United States, entitled “an act for the encouragement of learning, by securing the copies of maps, charts and books to the authors and proprietors of such copies, during the times therein mentioned,” and also an act entitled “an act supplementary to an act entitled an act for the encouragement of learning, by securing the copies of maps, charts and books to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints.”

JOHN H. HANNA,

*Clerk of the Kentucky District.*

(SEAL.)



## PREFACE.

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**T**HIS additional volume contains the acts of the four sessions immediately following the last in the third volume, a concise index to the whole work, corrections from the rolls, and a few dissertations on some important parts of our code. The reader will see, at one glance, the plan of the index: very considerable labor has been expended in the execution of it, and it is hoped that it will answer the purpose for which it was designed: it was intended as an index of reference only.

In making the corrections from the rolls, there are some acts which I purposely omitted examining, such as the several acts respecting the Ohio canal and the militia laws, not deeming them of sufficient importance or subsisting utility to compensate the requisite labor; but all other general laws, and all local acts of a permanent nature, of the rolls of which I could obtain a view, have been examined; but I have to regret that the enrolled bills of several important acts of different sessions, and of one entire session, are no longer in existence.

It was my design, at first, to have pointed out every difference between the enrolled bills and the printed copies, but this I was compelled to abandon, from a thorough conviction that a perfect transcript from the rolls would exhibit much greater absurdity and error than will be found in any printed copy whatever; for many of the bills exhibit every variety of misspelling, the substitution of verbs singular in place of plural, and *vice versa*, the introduction of words with no meaning, and of combinations of letters which make no words; sometimes the repetition of words and half sentences, and sometimes an entire omission of each; in short, every species of misprision which haste and carelessness could produce. In such cases, where the printed copy has been grammatical or intelligible, I have not thought it adviseable to intimate the difference between that and the roll, except in a very few instances.

179726

There are in the printed acts some errors so glaring that it is almost impossible to believe they exist in the rolls: as for instance, where the legislature speak of the *distribution* of a mill (Vol. I. p. 609) and of the neighborhood where persons *render* (Vol. II. p. 37); but so are the rolls, plainly and elegantly written. It is very difficult for a lawyer to believe that the words *feri facias*, in the execution law of 1796, (Vol. I. p. 549) have not by a mistake of the printer been substituted in place of *scire facias*; but the printed copies are correct transcripts from the rolls.

I am fully aware that a great number of the errors which I have corrected are of no practical importance, but I do not consider the examination and correction to have been the less necessary on that account, for there are in all our printed acts conclusive evidence of great mistakes *somewhere*; this naturally produced distrust, and rendered it necessary to have it clearly ascertained in what instances the errors were and were not committed by the printers, or those who prepared the copies for them. But some of the errors which I have corrected are of no trivial character. It will be seen that some counties are entitled by law to more justices of the peace than the printed acts allow them; and, what is of more consequence, that some, on the faith of the printed acts, have several to which they are not entitled by law. It may likewise be proper for those whom it may concern to consider whether the act raising the wages of the members of assembly to two dollars per day, is not, as it appears in the rolls, unconstitutional. Few indeed, if any, of the many errors I have corrected, have been committed by the printers of the present work; and the examination of the rolls, combined with the observations I have heretofore made during the printing of the acts of several sessions, has convinced me that very few of them are imputable to the state printers, but arise from the hurry, anxiety and consequent dispatch with which the copies are made out at the close of a session.

It was no doubt expected by many that the corrections from the rolls would have been made *before* the acts were printed. This was certainly my intention, but I found it impracticable to do it as it ought to be done: many corrections were however then made. But notwithstanding the former secretary, the hon. Jesse Bledsoe, was willing to accommodate me in the business, as much as he legally could, yet as he could neither permit me to take the rolls out of his office, nor decline doing his own duty there himself, I was under the necessity

## PREFACE.

v

of deferring the full examination until such time as I could do it under the sanction of a legislative act, in a private room.

As to the collections of acts, and observations on them, forming the appendices to this volume, the reader will see that they are on subjects deeply interesting to our country. It has been my aim to exhibit the whole *text* of the law on each subject; as to the remarks I have made, I trust I will be indulged with the following explanation: I did not feel myself called on to give my opinion as to the construction of any of those acts, and therefore should have deemed it rather presuming to have done so; but to analyze a legislative act, and say what it does and does not contain, and exhibit the points of difference between several acts on the same subject, is the privilege, not to say the duty, of every commentator. The reader will therefore not suppose that I have considered every difference which I have pointed out material or immaterial, for my business was to notice these differences, not to estimate them, and I have no fear that those who are to decide on any series of acts, will decide the worse on account of their understanding the precise import of each and every shade of difference between them.

WILLIAM LITTELL.

**NOTICE.**

*IN* page 454, of this volume, an opinion is expressed that Deeds were not allowed to be recorded in the offices of the quarter session courts, prior to the year 1796: that opinion is erroneous; they were authorised to be recorded there by an act of 1793.—*Vide* Vol. I. page 205.

**WILLIAM LITTELL.**

ACTS  
OF THE  
GENERAL ASSEMBLY OF KENTUCKY.

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December Session, 1808.

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CHAPTER I.

*AN ACT to direct the Register to suspend the receiving of certain Plats and Certificates for a limited time, and for other purposes.*

1808.

Approved December 24, 1808.

This act has long since expired, as appears by the concluding paragraph.

SECTION 1. **B**E it enacted by the General Assembly, Register shall not receive into his office, nor receipt for any plat or plats and certificates. nor certificate or certificates of surveys, made on any treasury warrant or warrants within the boundary set apart by an act of the legislature of the state of Virginia for the officers and soldiers of the Virginia state and continental lines, nor shall the said register issue any patent upon any plat and certificate of survey which may have been made and received by the register within the boundary aforesaid, and in case it does not appear upon the face of any plat and certificate which may have been received, that the land included therein does not lie within such boundary, that the register is hereby directed not to issue any patent thereon unless affidavit be made by the owner of such lands; that the land in such plat and certificate, does not lie in such boundary aforesaid.

Sec. 2. *And be it further enacted,* That where any certificate of survey on such treasury warrants, shall not

Vol. IV.

B

1808. be sufficiently clear from the face thereof, that the same is not within the boundary before alluded to, the register shall suspend receiving or receipting for the same pending the continuance of this act.

To commence. This act shall continue and be in force from its passage until the twentieth day of January 1809, and no longer.

## CHAPTER II.

*An ACT for the regulation of the Town of Columbia, in Adair County.*

Approved December 27, 1808.

Preamble. WHEREAS it is represented to the present general assembly, that there has been no special law passed heretofore for the regulation of the town of Columbia, and that it is necessary some special law be passed for that purpose,

Trustees to be appointed. Sec. 1. *Be it therefore enacted by the General Assembly.* That the free male inhabitants of the town of Columbia, who shall possess the qualifications hereinafter mentioned, are hereby authorised and required, to meet at the court-house in the said town of Columbia, on the second Saturday in January in the year 1809, and on the same day in every two years thereafter, and shall elect five trustees for said town, which said trustees so elected or a majority thereof, shall be sufficient to form a board, and shall be authorised to make any by-laws for the government and regulation of said town as to them may seem right, not inconsistent with the constitution and laws of this commonwealth.

To impose tax. Sec. 2. *Be it further enacted,* That the said trustees or a majority of them, shall have full power and authority to impose a tax annually on the real and personal property within the limits of said town, and on the donation land adjoining to said town, not exceeding sixty dollars, as to them shall seem right, for the purpose of keeping in repair the public streets, spring, &c. of said town or for any other purpose which the said trustees or a majority of them shall think proper for the benefit of said town.

To appoint a clerk, &c. Sec. 3. *Be it further enacted,* That the said trustees shall appoint their clerk and any other officer they may think proper, and the said trustees shall have full pow-

## XVII. YEAR OF THE COMMONWEALTH.

er, or a majority of them, to inflict a fine not exceeding ten dollars for every breach of their by-laws, to be sued for and recovered in their name, before any justice of the peace, and applied to the use of the said town.

1808.

Sec. 4. *And be it further enacted*, That no person shall be elected a trustee of said town, or qualified to act as such, unless he reside within the limits of said town, or on the donation lands adjoining thereto, and shall be the owner and possessor of real property in said town, or on the donation land, and be above the age of twenty-five years. Qualification of a trustee.

Sec. 5. *And be it further enacted*, That no person shall be qualified to vote at the general election for trustees for said town, unless they reside in said town, or on said donation land, or own real property therein, and be above the age of eighteen years. Qualification of voters.

Sec. 6. *And be it further enacted*, That the board of trustees for said town may at any time they may think proper, appoint some fit person, who shall reside in said town, or on the aforesaid donation land, as a commissioner for the purpose of obtaining, in such manner as the board may think proper, a list of all such property as may be subject to taxation by this act in said town, or on said donation land; whose duty it shall be to proceed to obtain such list, and shall return the same to the said board in such time and in such manner as the said board shall direct, for the purpose of enabling said trustees to apportion the tax on said town and the aforesaid donation land; the said commissioner shall be allowed such sum per day as the said trustees may deem right, to be paid out of the money to be collected as taxes. Trustees to appoint a commissioner.  
His duty.

Sec. 7. *And be it further enacted*, That after the said trustees have laid and apportioned the taxes under this act, they shall appoint a collector thereof, whose duty it shall be to collect and account for the same to the trustees within two months after he shall have been furnished with a list of said taxes; and if any person shall fail or refuse to pay the same, the said collector shall make distress and sale of property in the same manner as collectors of revenue are directed to do; and the said collector shall pay the money so collected to the trustees of said town, and the said collector shall be allowed six per centum on all monies which he shall have to distrain for, and such compensation for the collection of other Collector to be appointed.  
His duty.

1808. taxes as the said trustees may think proper, to be paid out of said taxes.

Collector to give bond. Sec. 8. *And be it further enacted*, That the collector shall give bond with security to the said trustees for the due performance of his office, and shall also take the following oath, to wit: "I do solemnly swear (or affirm, as the case may be) that I will faithfully and truly collect all taxes put into my hands for collection by the trustees for the town of Columbia, within my power, and will pay all monies so collected to said trustees according to law, so help me God;" which said oath either of the trustees are authorised to administer.

To take an oath. Sec. 9. *And be it further enacted*, That in case the said collector shall fail to pay the money collected by him to the trustees as aforesaid, they may upon giving him ten days previous notice in writing, recover judgment against the said collector and his security in the county court of Adair county, by motion.

Penalty for failure. Sec. 10. *And be it further enacted*, That in case a vacancy shall happen in the said board of trustees by death, resignation or otherwise, between the general election for trustees for said town, the remaining trustees or a majority of them shall meet at the court-house in said town as soon as convenient, and supply such vacancy; which said trustee or trustees so appointed shall possess the same power and qualification as those elected at the general election, and shall continue in office until the next general election for trustees, and no longer.

Vacancy how filled. Sec. 11. *And be it further enacted*, That the said trustees after they are elected shall meet at the court-house in said town, on the first Saturday in February, May, August and November annually, and at such other times as they may think proper in every year, as the internal policy of the said town may require; and the trustees elected in pursuance of this act shall continue for and during the term of two years from the time of their election.

Duty of trustees. Sec. 12. *And be it further enacted*, That the said trustees at some one of the meetings in every year shall make such allowance to their clerk, as they may think proper, to be paid out of any money collected in pursuance of this act.

Clerk to take an oath. Sec. 13. *And be it further enacted*, That the said clerk shall take an oath before he enters upon the duties of



## XVII. YEAR OF THE COMMONWEALTH.

5

his office, to carefully keep and preserve the books and all other papers confided to him by said trustees, and to make true and correct entries of all by-laws passed by said trustees; which said oath shall be administered by the president of the board.

1808.

Sec. 14. *And be it further enacted*, That the said trustees shall severally take an oath before he enters upon the duties of his office, well and truly to perform the duties enjoined upon him as trustee; which said oath shall be administered to him by some justice of the peace and recorded by the clerk of said trustees. Trustees to take an oath.

Sec. 15. *And be it further enacted*, That every trustee who shall fail to attend said meetings, without a reasonable excuse, shall forfeit and pay for every failure two dollars, to be applied to the use of said town, which said excuse shall be adjudged of by the remainder of the trustees, or a majority of them; and in case a fine should be imposed, and the said trustees should fail or refuse to pay it to the collector when demanded, it shall and may be lawful for the remaining trustees to sue for and recover the same before a justice of the peace. Penalty for non-attendance.

Sec. 16. *And be it further enacted*, That the first election shall be held by some two justices of the peace of Adair county, which said justices shall be nominated by the county court of Adair county; and every other general election shall be held in like manner. By whom elections to be held.

Sec. 17. *And be it further enacted*, That in case the said qualified voters or justices shall fail to meet as aforesaid, after the first general election, the former trustees shall continue in office until the next general election be held for trustees. Continuance of trustees.

This act shall commence and be in force from and after the passage thereof.

### CHAPTER III.

*An ACT to prolong the time for entering Land for Taxes.*

Approved December 27, 1808.

The act referred to will be found in Vol. III, page 335.

*BE it enacted by the General Assembly*, That the further time of two years, from the expiration of an act entitled "an act allowing further time to enter land for taxes," approved the 27th December, 1806, shall be and hereby is allowed for entering lands as is provided for in and by the said act.

6  
DECEMBER SESSION,

1808. This act shall commence and be in force from its passage.

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CHAPTER IV.

*An ACT to amend an act entitled "an act for the benefit of Daniel Kessler."*

Approved December 27, 1808.

By an act of the last session he had been permitted to obtain a land warrant for a quantity of land on Ruffel's creek, not exceeding 200 acres, nor less than 100 acres. It was found, on making a survey, that there was only 49 and a half acres of vacant land in the place. This act allowed him to obtain a warrant for that quantity, instead of the warrant which the former act permitted him to obtain.

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CHAPTER V.

*An ACT to amend an act for the relief of the heirs of James Bristoe.*

Approved January 3, 1809.

In the act of last session the name of *James* was by mistake inserted in the place of *Benjamin*, and the number (of the warrant) 765 instead of 766. This act corrects the mistake.

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CHAPTER VI.

*An ACT for the relief of certain Sheriffs in this Commonwealth.*

Approved January 3, 1809.

Had its effect.

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CHAPTER VII.

*An ACT to repeal so much of the act entitled "an act to improve and keep open the navigation of the Beech Fork of Salt River," as relates to Brashear's Creek.*

Approved January 3, 1809.

The act here referred to will be found in Vol. II, page 314.

BE it enacted by the General Assembly, That so much of an act entitled "an act to improve and keep open the navigation of the Beech Fork of Salt river, and other water courses," passed December 26th 1805, as relates to the navigation of Brashear's creek, be and the same is hereby repealed.

This act shall commence and be in force from and after the passage thereof.

XVII. YEAR OF THE COMMONWEALTH.

7

CHAPTER VIII.

1808.

*An ACT giving further time to pay into the Treasury certain monies without interest.*

Had its effect.

Approved January 3, 1809.

CHAPTER IX.

*An ACT to amend an act entitled "an act to amend and reduce into one the several acts concerning the Town of Augusta, in Bracken County.*

Approved January 3, 1809.

WHEREAS it is represented to the present general assembly, that the upper bank of the Ohio, bordering on Water street, in the town of Augusta, in the county of Bracken, is wearing off and encroaching upon said street, to the inconvenience of the citizens of said town; and that if the same is made the property of individuals their interest would induce a remedy for the same: therefore,

Sec. 1. *Be it enacted by the general assembly,* That the trustees of the said town of Augusta be and they are hereby authorised to lay off by metes and bounds twenty-one lots, each sixty feet in front and forty feet in depth, on the north side of Water street in the town aforesaid, reserving the necessary streets and alleys from the street aforesaid to the river.

Sec. 2. *And be it further enacted,* That each owner of a lot or lots on the south side of said Water street, shall be entitled to a lot on the north side thereof, to be set off to him by said trustees, but said trustees in setting off the lots as aforesaid shall give the preference to those persons who have already built thereon, and in no case shall their buildings be interfered with, provided the person to whom the same is set off shall within two years erect or cause to be erected a sufficient wall of brick, stone or timber, as shall by said trustees be thought best for the preservation of the bank and streets aforesaid the whole length of his lot on the north side of the street aforesaid: and in case such person shall neglect or refuse to do the same within the term aforesaid, then such lot or lots shall be sold for the best price that can be had, and the proceeds thereof applied in such manner as will best prevent encroachments upon the bank and

1808.



street aforesaid, under the direction of the said trustees, and after the said trustees shall have set off the lots as aforesaid to the several owners of lots adjoining on the south side of said street, then the balance of the said lots shall be sold by them for the use of the proprietor, subject however to be sold in the same manner that other lots are in case of a failure in erecting the walls aforesaid: *Provided*, that nothing in this act contained shall be construed to derogate from the legal or equitable right of any person whomsoever, except Philip Buckner, the present proprietor thereof, and the trustees of the town aforesaid and their successors.

Proviso.

Trustees' further duty.

Sec. 3. *Be it further enacted*, That whenever the person to whose use any lot is set off as aforesaid, shall erect or cause to be erected such wall, pursuant to the direction of the said trustees, then the said trustees are hereby directed to convey the same to such person by deed, therein warranting the same against the claim of themselves and their successors and the said Philip Buckner, the present proprietor thereof; and any dwelling or store-houses may be erected thereon by the respective owners of said lots, not exceeding one story high from a level with Water street aforesaid; but nothing herein contained shall be so construed as to extend to the building of slaughter-houses, stables, or buildings for such uses as may be considered pernicious to health.

Trustees, how elected.

Sec. 4. *And be it further enacted*, That the trustees of said town shall hereafter be elected from the lot-holders therein, and no person except such shall be eligible.

This act to commence and be in force from and after the first day of March next.

#### CHAPTER X.

*An ACT to authorise the County Court of Nicholas to appoint Trustees of the town of Newtown within said county, and for other purposes.*

Approved January 3, 1809.

WHEREAS it is represented to the present general assembly, that the trustees of Newtown in Nicholas county, have by death, removal and resignation vacated their offices, whereby the board of trustees for that town hath become extinct; therefore,

## XVII. YEAR OF THE COMMONWEALTH.

9

Sec. 1. *Be it enacted by the general assembly, That the county court of Nicholas county be, and the same hereby is authorised on application of the holders of lots in said town to appoint the same number of trustees that were heretofore appointed on the establishment thereof; and the said trustees so appointed shall have the same power and authority that other trustees of towns have, under an act entitled "an act for the establishment of towns."*

1808.

This act to be in force from its passage.

### CHAPTER XI.

*An ACT for the relief of the Sheriff of Hopkins County.*

Approved January 16, 1809.

He had not received his commission in time to enable him to make his collections, in consequence of which the Auditor had obtained a judgment against him. This act allowed him four months longer, suspended the judgment in the mean time, and released him from all penalties on condition of his compliance.

### CHAPTER XII.

*An ACT authorising the County Courts of Bourbon, Franklin, Harrison and Shelby, to lay an additional levy for the year 1809.*

Approved January 16, 1809.

This was to enable them to rebuild the bridges which had just been swept away.

### CHAPTER XIII.

*An ACT fixing the permanent Seat of Justice of Warren County on the old public square in the Town of Bowling Green.*

Approved January 16, 1809.

### CHAPTER XIV.

*An ACT to amend the act, entitled "an act to amend the act authorising commissioners to sell part of the land of which John Elliott died seized and possessed."*

Approved January 16, 1809.

Daniel M<sup>c</sup>Gary and James Elliott, two of the commissioners appointed by a former law, had failed to act, and had removed. This act appointed James M<sup>c</sup>Elhany and William Donaldson in their stead.

## DECEMBER SESSION,

1808.

## CHAPTER XV.

*An ACT to add part of Ohio County to the County of Henderson.*

Approved January 16, 1809.

Sec. 1. *BE it enacted by the general assembly,* That from and after the first day of April next, all that part of Ohio county, comprised within the following bounds, shall be added to and considered as part of the county of Henderson, to wit: beginning on the Ohio at the mouth of Green river and running up the Ohio to where the line of Henderson & Co's. grant strikes the same, thence with said line to Green river, thence down the same to the beginning.

Sec. 2. *And be it further enacted,* That the sheriff of the said county of Ohio, may lawfully after the first day of February next, distrain or collect all public dues and officers' fees from the inhabitants residing in the before mentioned boundary, which the said sheriff now is, or may be, before the said first day of April next, bound by law to collect.

This act shall commence and be in force from and after the passage thereof.

## CHAPTER XVI.

*An ACT to legalize the proceedings of the Logan and Bracken County Courts.*

Approved January 17, 1809.

The county court of Logan had laid the levy when there was not a majority of justices. The county court of Bracken had not sat on Monday, but did on Tuesday [the next day]: These were the proceedings legalised.

## CHAPTER XVII.

*An ACT for the better regulation of the Town of Richmond, in Madison County.*

Approved January 17, 1809.

Preamble.

WHEREAS it is represented to this general assembly that the inhabitants of the town of Richmond, in the county of Madison, labor under many inconveniences in consequence of the laws regulating towns in this commonwealth having proved ineffectual, and that it is necessary there should be some further regulations for the

# XVII. YEAR OF THE COMMONWEALTH.

11

promotion of said town, and the benefit of its inhabitants; therefore,

1808.

Sec. 1. *Be it enacted by the general assembly,* That the trustees of the town of Richmond who are now in office, shall continue, and they are hereby declared to be the trustees of said town until the fourth Monday in July next, on which day annually, there shall be an election held at the court-house in said town, for the election of trustees, which shall be conducted by the clerk of the trustees then in office, and under their direction, and the said clerk shall give public notice by advertisement at the court-house door and other public places in said town, one month next preceding the election in each year, and it shall also be the duty of the clerk when the election is closed, to enter on record in the book kept by him for the trustees of said town, the names of those persons duly elected as trustees aforesaid.

Trustees appointed.

Sec. 2. *And be it further enacted,* That it shall be lawful for all the free male inhabitants living in the said town and limits thereof, who are of the age of twenty-one years, and entitled to vote in the election of a representative to the general assembly of Kentucky, to elect and choose annually on the fourth Monday in July, five trustees, which election shall be conducted by the clerk under the direction of the trustees as aforesaid. And the trustees of said town may elect their own clerk, who shall not be removed from office for one year next succeeding his election, unless for improper conduct in discharging the duties of his office, then, in that case, the trustees as aforesaid may remove him from office and proceed to the choice of another. The said trustees shall have the power to regulate and repair the streets and highways in said town, to remove nuisances and obstructions therein, at the expence of the party who occasioned them: *Provided,* That the party or parties will not remove them on receiving notice from the trustees aforesaid, and when such person or persons fail after having notice given them, to remove such nuisances or obstructions, the trustees shall on failure thereof immediately proceed to have it done, and when done, the trustees of said town may proceed by warrant before some justice of the peace of said county for the recovery of such sum or sums of money as may accrue in the removal of such nuisances or obstructions in said town.

Who entitled to vote for trustees.

Clerk to be elected.

Powers of trustees.

Provide.

1808. *And also to impose taxes in any manner they may deem the most equitable, not exceeding the sum of seventy-five pounds annually on the titheables, and property real and personal, within the said town ; and also to make such provisions and regulations as they may deem proper for the collecting and accounting for the taxes so imposed, by appointing a collector and directing a distress to be made in like manner as that of collecting the revenue in cases of delinquencies, and to make such by-laws, ordinances and regulations, not contrary to the laws and constitution of this commonwealth, as shall by a majority of them be thought necessary for carrying this act into effect.*

*Sec. 3. And be it further enacted, That no person shall be capable of being elected, or to act as a trustee, who is not a freeholder and inhabitant in said town ; and no person residing in said town and limits shall be capable of being appointed, or act as a surveyor of any road without the same.*

*Sec. 4. And be it further enacted, That in cases of vacancies that may be occasioned by death, disqualification or otherwise, the remaining trustees shall as soon as may be, proceed to fill the vacancy from amongst the citizens of said town, who may be qualified as aforesaid ; and when a trustee shall cease to be a freeholder and inhabitant, or resident of said town, he shall be considered disqualified, and another elected in his stead. Any act coming within the purview of this act shall be and the same is hereby repealed.*

*This act shall commence and be in force from and after the passage thereof.*

#### CHAPTER XVIII.

*An ACT for the relief of John Upton's heirs.*

Approved January 25, 1809.

*They were infants, and their head-right land had been sold to the state for the payment of the first instalment. This act permitted their claim to be reinstated.*

#### CHAPTER XIX.

*An ACT allowing to Non-Residents whose Lands have been stricken off to the State by the Register in 1806, for Taxes, &c. further time to redeem the same.*

Approved January 24, 1809.

*The act referred to will be found in Vol. III, page 335.*



*BE it enacted by the general assembly, That the further time of two years from the passage of this act be allowed to such non-residents, whose lands have been stricken off to the state by the register for the non-payment of the taxes, interest and cost due thereon in the year 1806, to redeem the same under the rules and regulations prescribed in the act entitled "an act providing for the redemption of land sold for taxes," passed in 1806.*

1808.

This act shall commence and be in force from and after the passage thereof.

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CHAPTER XX.

*An ACT for the relief of Silas M'Bee, John Jackson and John Moren.*

Approved January 24, 1809.

They were proprietors of head-right lands. This act relieved them from some embarrassments they had got into by erroneous and irregular proceedings.

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CHAPTER XXI.

*An ACT to legalize the proceedings of the County Courts of Floyd and Washington Counties.*

Approved January 24, 1809.

They had held their courts in weeks not authorised by law. This was the proceeding legalized.

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CHAPTER XXII.

*An ACT allowing John James and others further time to return certain Plats and Certificates.*

Approved January 25, 1809.

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CHAPTER XXIII.

*An ACT for the relief of Thomas Adams.*

Approved January 25, 1809.

He was a justice of the peace, and had solemnized a marriage, *not being specially authorised* so to do. This act released him from the penalties incurred.

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CHAPTER XXIV.

*An ACT authorising the County Courts in this Commonwealth to establish Inspections.*

Approved January 25, 1809.

*BE it enacted by the general assembly, That the several county courts within this commonwealth, a major*

1808.

rity of all the magistrates in the county being present, shall be and are hereby vested with competent power, to establish within their counties respectively inspections of tobacco, hemp and flour, under the same regulations that are prescribed by the several laws now in force upon that subject within this commonwealth: Provided, that previous to application for such inspection, there shall be public notice of the same one month before, by advertisement at the door of the court-house in the county where such application is intended to be made: Provided, that no inspection shall be established within less than three miles of any inspection previously established on the same side of a river or creek, unless two-thirds of all the justices in the county shall concur in the erection of a ware-house within the distance aforesaid.

This act to commence and be in force from its passage.

#### CHAPTER XXV.

*An ACT for the benefit of the Collector of the Revenue Tax for the County of Muhlenburgh.*

Approved January 15, 1809.

He was appointed too late to have time to make his collections. This act gave him four months to do it in.

#### CHAPTER XXVI.

*An ACT to amend the act entitled "an act to amend the act providing for the Debt due this Commonwealth for the sale of Vacant Lands."*

Approved January 26, 1809.

The acts referred to will be found in Vol. III, pages 385 and 436.

Sec. 1. *BE it enacted by the general assembly, That* the sales of land directed to be made by the register of the land office, under the act of assembly passed the twenty-seventh of December, one thousand eight hundred and six, the time of which sales was suspended by an act of last session, entitled "an act to suspend the sale of lands for the debt due the state," until the first Monday in June next, that the sales of said land shall be, and the same is hereby suspended until the first Monday in June, one thousand eight hundred and ten, and the auditor shall perform the duties required under the

before recited act against the first Monday in June, one thousand eight hundred and ten.

1808.

Sec. 2. *Be it further enacted*, That the register shall on the first Monday in June one thousand eight hundred and ten, proceed to make sale of the lands upon which any instalment and interest at that time may be due and unpaid, in the same way as he would have been bound to do on the first Monday in June next, had this act not taken effect.

Sec. 3. *Be it further enacted*, That the instalment which by the existing law would become due on the first Monday in June next, shall be payable on the first Monday in June one thousand eight hundred and ten, and each other instalment shall be payable annually on the first Monday in June in each year thereafter, till the whole is paid: Provided, however, legal interest shall be paid on the whole amount of the instalment, at the time of paying each several instalment as heretofore.

Sec. 4. *Be it further enacted*, That every person indebted to this state, for any land acquired under any law of this commonwealth, who shall pay into the public treasury, within twelve months from the passage of this act, the whole amount of the state price, or the balance remaining due, part being already paid for said land, shall be entitled to a discount of the interest due and to become due thereon.

Sec. 5. *And be it further enacted*, That where any tract of head-right land, shall have been struck off to the state, at either of the sales, that the owner or owners of the said claim, shall have the privilege of redeeming the said claim, on or before the first Monday in June one thousand eight hundred and ten, by paying into the public treasury, the whole amount of principal due on the said claim, together with the costs of sale and redemption, and shall be entitled to a discount of the interest due or to become due thereon.

This law shall commence and be in force from and after its passage.

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CHAPTER XXVII.

*An ACT for fixing the Permanent Seat of Justice of  
Lewis County.*

Approved January 28, 1809.

Commissioners from Mason, Fleming and Greenup, were appointed to fix it.

1808.

## CHAPTER XXVIII.

*An ACT to repeal an act making provision for the honorable George Muter, late Chief Justice of this Commonwealth.*

Passed, pursuant to the Constitution, the Governor's objections notwithstanding, January 30, 1809.

WHEREAS an act, entitled "an act making provision for the honorable George Muter, late chief justice of this commonwealth," passed and was approved on the twenty-second day of December, 1806—whereby the said George Muter was, and is authorised to receive from the public treasury annually, during his life, the sum of three hundred dollars, and it is deemed expedient to repeal the said recited act ; therefore,

*Be it enacted by the general assembly,* That the said recited act be and the same is hereby repealed.

And this act shall be in force from its passage.

## CHAPTER XXIX.

*An ACT allowing additional Justices of the Peace in certain Counties in this Commonwealth.*

Approved January 25, 1809.

WHEREAS it is represented to the general assembly, that there is not a sufficient number of justices in the commission of the peace, in the counties of Estill, Adair, Henderson, Warren, Knox, Garrard, Christian, Lewis, Barren, Logan, Wayne and Hopkins, to transact the business of their respective counties with convenience : For remedy whereof,

*Be it enacted by the general assembly,* That the county of Estill, shall be entitled to two justices of the peace in addition to the number now allowed by law ;

The county of Adair, shall be entitled to two justices of the peace in addition to the number allowed by law ;

The county of Henderson, one in addition to the number now allowed by law ;

The county of Knox, three in addition to the number now allowed by law ;

The county of Warren, three in addition to the number now allowed by law ;

The county of Garrard, one in addition to the number now allowed by law ;

## XVII. YEAR OF THE COMMONWEALTH.

17

The county of Christian, two in addition to the number already allowed by law ;

1808.

The county of Lewis, one in addition to the number already allowed by law ;

The county of Barren, two in addition to the number already allowed by law ;

The county of Logan, two in addition to the number already allowed by law ;

The county of Wayne, one in addition to the number already allowed by law ;

The county of Hopkins, one in addition to the number already allowed by law.

This act to be in force from its passage.

## CHAPTER XXX.

*An ACT establishing Academies in the Counties of Lewis and Clay.*

Approved January 31, 1809.

Sec. 1. *BE it enacted by the general assembly, That* Trustees of Lewis academy.  
Winslow Parker, Robert Robb, Aaron Stratton, William Walker, John Radford, James Barclay and Rowland Thomas, gentlemen, shall be and are hereby constituted a body politic and corporate, to be known by the name of the trustees of the Lewis Academy, and by that name shall have perpetual succession and a common seal, with power to change or alter the same at their pleasure ; and as a body corporate, shall be authorized to exercise all the powers and privileges, that are now enjoyed by the trustees of any academy or seminary of learning within this state ; and on the death, resignation or other disqualification of any of the trustees aforesaid or their successors, a majority of the remaining trustees, shall fill such vacancy, and the person so appointed, shall be vested with the same power and authority, as if specially named by this act ; and by the name and style of the trustees of the Lewis Academy, may sue and implead, or be sued and impleaded in any court in law or equity, or before any tribunal having cognizance of the same. Power and duty.

Sec. 2. The said trustees and their successors, shall have power in their corporate capacity to purchase, or receive by donation any lands, tenements, hereditaments, monies, rents, goods and chattels, and to hold the same

1808. by the name aforesaid, to them and their successors forever, for the use of said Academy, and to sell, alien, or transfer any such lands, goods and chattels, and apply the proceeds thereof to the use and benefit thereof.

May locate lands. Sec. 3. The said trustees, shall be entitled to locate, survey and patent, the quantity of six thousand acres of vacant land, on the terms and conditions prescribed in the act entitled "an act to establish and endow certain academies," and the several acts amendatory thereto; and for that purpose, may contract with any person or persons, to locate and have the same surveyed, for which services they are authorised to give and convey to such person or persons, a part of the said lands not exceeding two thousand acres, and may also dispose of one thousand acres, for the purpose of erecting the necessary buildings, and providing books and other apparatus, for the use of the said Academy.

Regulations as to meetings and appointment of officers, &c. Sec. 4. The person first named herein, or in his absence, or refusal to act, the next shall notify the time and place for the first meeting of the trustees, and on the attendance of a majority thereof, they shall appoint a chairman and clerk, who shall severally take an oath "well and truly to execute the duties of their office," and thereafter the board may be called by the chairman or any two of the trustees. The said trustees shall have power to adjourn from day to day, to make and ordain such by-laws, rules and ordinances, as they may deem proper, not inconsistent with the laws of this commonwealth; and moreover, to fix on a proper place for erecting the buildings for the said Academy: Provided, that a majority of all the trustees, shall be necessary to attend on the making of any contracts, by-laws, or fixing the permanent seat for the same.

May employ professors. Sec. 5. A majority of the said trustees, shall have power to engage and employ a competent number of masters and professors to the said academy; to fix their salaries and the salary of their clerk, as also the terms of tuition, and on the misconduct of any master, professor or student, may dismiss or expel such master, professor or student from the said Academy.

Trustees of Manchester Academy. Sec. 6. *And be it further enacted*, That Abner Baker, Daniel Garrard, John Hebbard, James Todd and Beverly Broadis, shall be, and are hereby constituted a body politic and corporate, and known by the name and

style of the trustees of the Manchester Academy ; and the said trustees and their successors, shall possess the same powers, and be governed by the same rules and regulations, that are directed by this act to be observed by the trustees of Lewis Academy.

1808.

This act shall be in force from and after the passage thereof.

### CHAPTER XXXI.

#### *An ACT regulating Divorces in this Commonwealth.*

Approved January 31, 1809.

Sec. 1. *BE it enacted by the general assembly,* That the several circuit courts in this commonwealth shall be and are hereby invested with power and jurisdiction to decree divorces in the manner hereafter mentioned, in the following cases, that is to say : In favor of a husband, where his wife shall have voluntarily left his bed and board with the intention of abandonment, for the space of three years, or where she shall have abandoned him and lived in adultery with another man or men, or shall have been condemned for a felony in any court of record within the United States : In favor of a wife, where her husband shall have left her, with the intention of abandonment, for the space of two years ; or where he shall have abandoned her and lived in adultery with another woman or other women, or shall have been condemned for a felony in any court of record within the United States, or where his treatment to her is so cruel, barbarous and inhuman as actually to endanger her life,

Powers granted  
to the circuit  
courts.

Causes of di-  
vorce.

Sec. 2. *Be it further enacted,* That in the cases before mentioned, the party desirous of obtaining a divorce, may apply to the circuit court of that county in which he or she resides, by a bill in equity, stating the grounds of the application, on which such proceedings shall be had, as are usual in other suits in chancery ; except so far as they may be directed to be deviated from by this act ; but if any of the aforesaid causes of divorce apply to the complainant, he or she shall be subjected to a dismissal of such suit.

How applica-  
tion to be made.

Sec. 3. *Be it further enacted,* That if the defendant resides not within this commonwealth, and the court are satisfied by disinterested affidavit of his or her absence, they may proceed to order publication as against

Order of pub-  
lication when  
non-resident.

1808. other absentees, except that the order shall succinctly state the object of the bill.

Answer.

Sec. 4. *Be it further enacted*, That upon the appearance of the defendant, he or she in answer without oath, may by general denial controvert the allegations of the bill, and may also allege any of the aforesaid causes of divorce to apply to the complainant; or if the defendant fail to appear, the suit shall be set down for trial; but the allegations shall not be considered as confessed nor proof dispensed with.

Attornies for Commonwealth to oppose granting divorces.

Sec. 5. *Be it further enacted*, That it shall be the duty of the several attornies prosecuting for the commonwealth in the circuit courts, respectively to oppose the granting of any divorce not warranted by this act.

Decree.

Sec. 6. *Be it further enacted*, That if there shall on hearing appear to be just cause for a divorce within the provisions of this act according to the sound construction thereof, the court shall pronounce a decree declaring the complainant divorced from his or her husband or wife; but such decree shall not operate so as to release the offending party, who shall nevertheless remain subject to all the pains and penalties which the law prescribes against a marriage whilst a former husband or wife is living; nor shall it authorise the injured party again to contract matrimony within two years from the time of pronouncing such final decree.

Its operation.

Courts to regulate the division of estates.

Sec. 7. *Be it further enacted*, That the court pronouncing the decree of divorce shall regulate and order the division of the estate, real and personal, in such way as to them shall seem just and right, having due regard to each party, and the children, if any: *Provided however*, that nothing herein contained shall be construed to authorise the court to compel either of the parties to divest himself or herself of the title to the real estate.

Powers of courts pending suits.

Sec. 8. *And be it further enacted*, That pending a suit for a divorce the court may make such temporary orders relative to the property and parties as they shall deem equitable.

This act shall be in force from its passage.



## CHAPTER XXXII.

1808.

*An ACT to amend the acts establishing the General Court.*

Approved January 31, 1809.

The act referred to in the first section will be found in Vol. III, page 504.

Sec. 1. *BE it enacted by the general assembly,* That Judges classed, for the purpose hereinafter mentioned, each circuit judge shall be considered as bearing the number annexed to his district, agreeably to the arrangement made by the act passed at the last session of the general assembly; and that it shall be their duty to attend the general court by threes at a term, according to the following arrangement, viz. the first three numbers to attend at the next spring term, the next three at the succeeding fall term, and so on in succession, combining the last with as many of the first as shall make the required number, three, and so on in rotation forever. And should it so happen that all the three should not attend at a term, or on any day of a term, the business shall not be thereby obstructed, but such of them as shall attend may form the court and proceed.

Sec. 2. *Be it further enacted,* That if any circuit judge shall fail to attend the general court at any term or day thereof, when it shall be his duty to attend it, either from the provisions of this or any other law of this commonwealth, or shall fail to attend any circuit court in the district to which he may belong, his salary for that year shall be subject to a deduction of ten dollars per day for every day he shall so absent himself, unless it shall be shewn by affidavit to be filed with the auditor that such absence was occasioned by sickness of himself or dangerous indisposition of his wife or family, or by his necessary attendance on some other court, or some other unavoidable cause: *Provided however,* that if a circuit judge shall find it inconvenient to attend at a term of a circuit court, or a term of the general court, to which he shall stand appointed, and shall procure the attendance and service of another circuit judge in his stead, it shall be lawful for the procured judge to officiate in the room of the other, and shall exempt such absent judge from a deduction of salary for the term thus supplied, as though he had served in person. And it shall be the duty of each clerk of a circuit court, and the clerk of the general court, immediately after each term, to certify to the au-

Penalty for non-attendance.

How exonerated.

Proviso.

Clerks to certify to auditor.

1808.

ditor of public accounts the name of any circuit judge who shall fail to attend court agreeably to law, either in person or by proxy as aforesaid, together with the time and number of days of such absence, which certificate may be transmitted to the auditor by mail, the postage to be paid by the clerk and to have a credit for such postage in settlement of his accounts with the auditor; and the auditor issuing the warrant next after the receipt of such certificate shall observe and make the deduction pursuant to the provisions aforesaid.

Term of general court unlimited.

Sec. 3. *And be it enacted*, That each term of the said general court may continue until the business before them shall be disposed of; and if on any day or days the court shall not be opened, the term shall not be thereby ended, but when the judge or judges shall attend, he or they may cause the court to be opened, and proceed as though the interruption had not taken place.

Suits may be removed from federal court.

Sec. 4. The general court may hold jurisdiction of and proceed in any cause which by the consent of the parties shall be removed to it from the circuit court of the United States for the Kentucky district.

This act shall be in force from and after its passage.

### CHAPTER XXXIII.

#### *An ACT for the division of Livingston County.*

Approved January 31, 1809.

Boundary.

Sec. 1. *BE it enacted by the general assembly*, That from and after the first day of May next, all that part of the county of Livingston included in the following bounds, to wit: Beginning on the Tradewater river at Owen's ford, running from thence a straight line to the forks of Livingston's creek, next below the Sycamore Lick, thence down the same with its meanders to the mouth thereof, thence south-west to the Tennessee state line, thence east with the said line to the line of Christian county, thence with the same to Tradewater river, thence down the same to the beginning, shall be one distinct county, to be called and known by the name of Caldwell.

Name.

When courts to be held,

Sec. 2. After the said division shall take place, the courts for said county shall be held on the fourth Mondays of every month, except the months in which the circuit courts are held, which circuit court shall be held

on the fourth Mondays in May, August and November in every year, and may continue six days each term, if necessary, in such manner as is provided by law in respect to other circuit courts. 1808.

Sec. 3. The justices of the peace for the said county of Caldwell shall meet at the court-house in Eddyville on the first court day after the said division shall take place, and after having taken the oaths required by the constitution of the United States and of this state, and the sheriff being duly qualified according to law, shall proceed to appoint and qualify a clerk; which several oaths may be administered by either of the justices in the commission of the peace, and by him to the rest of the court. When justices to meet.

Sec. 4. A majority of the justices in the commission of the peace, and the assistant judges of said county, shall concur in fixing the permanent seat of justice for said county, having a due regard to the centre and other conveniences. Seat of justice how fixed.

Sec. 5. It shall be lawful for the sheriff of the county of Livingston to collect any officers' fees or public dues, in the manner prescribed by law, which shall remain unpaid, after the time the said county takes place, within the bounds of the county of Caldwell, and shall be accountable for the same, in the same manner as if this law had not taken place. Duty of Livingston sheriff.

Sec. 6. The court of Livingston shall have jurisdiction in all matters in law or equity that shall be depending before them at the time of the division, and shall try and determine the same, issue process and award executions thereon. What jurisdiction retained.

Sec. 7. *Be it further enacted*, That the county court and sheriff of the said county of Caldwell shall be governed by the same laws and regulations as other county courts and sheriffs are, relative to elections; and the sheriff of the county of Caldwell and the sheriff of the county of Livingston, shall, on the Saturday next after the election, meet at the court-house in Centreville, to compare the polls, and ascertain the persons duly elected; and in making out the certificate of the same, both sheriffs shall fix their signatures thereto. How county court and sheriff to be governed.

And whereas it appears to the present general assembly, that from said division of Livingston county as

1808.

Seat of Justice  
in Livingston  
how fixed.

aforesaid, the seat of justice for said county of Livingston is not central nor convenient for said county :

Sec. 8. *Be it enacted by the general assembly,* That the justices of the peace and assistant judges for said county of Livingston shall meet at the court-house in the town of Centreville, on the third Monday in April, and a majority of said justices being present, they shall then proceed to fix the permanent seat of justice for said county of Livingston, in the most suitable and convenient place, paying a just regard to the centre of said county, and said county court for said county shall thereupon adjourn to said place, so soon as accommodations can be had, then and there fixed upon as aforesaid for the seat of justice for said county, and shall certify the same to the circuit court for said county; and the county courts, called courts and circuit courts for said county shall thenceforth hold their sessions at said place fixed upon as aforesaid, and said place so fixed upon as aforesaid shall to all intents and purposes be the permanent seat of justice for said county.

This act shall be in force from and after the third Monday in April next.

#### CHAPTER XXXIV.

##### *An ACT concerning the Town of Glasgow, in the County of Barren.*

Approved January 31, 1809.

Sec. 1. *BE it enacted by the general assembly,* That it shall and may be lawful for the free male inhabitants of the said town, and who shall have attained to the age of twenty-one years or upwards, to meet at the court-house in said town, on the first Monday in May next, and on the first Monday in May in each year thereafter, and to elect five trustees for the said town; which trustees shall possess the qualifications hereafter mentioned; and a majority of them so elected shall be sufficient to constitute a board, who shall be and they are hereby authorised to make such by-laws for the government and regulation of the said town, as to them shall seem proper, not inconsistent with the constitution and laws of this commonwealth. The said trustees, or a majority of them, shall have full power and authority to impose a tax annually not exceeding one hundred and fifty dol-

Inhabitants of  
Glasgow to e-  
lect five trus-  
tees.

Majority to con-  
stitute a board.

To make by-  
laws and impose  
a tax.

lars, on any property real or personal within the said town, as to them shall seem proper and just, to be by them appropriated for the purpose of keeping the streets in good repair within the town aforesaid, in such manner as they may direct.

1808.

Sec. 2. *And be it further enacted*, That no person shall be elected a trustee, or qualified to act as such, unless he shall have attained to the age of twenty-one years, and shall reside within and be the fee simple owner of real property in the said town; and the said trustees, so elected, shall have power to regulate the market of the said town, and to inflict a fine, not exceeding five dollars, for each and every breach of their by-laws, to be sued for in their names and recovered before any justice of the peace.

Qualifications  
and powers of  
trustees.

Sec. 3. *And be it further enacted*, That the first election to be holden on the first Monday in May next at the court-house, for the purpose of electing trustees, under the directions of this act, shall be conducted and holden by two justices of the peace for said county. The said justices shall have power to appoint a clerk pro tempore, for the purpose of assisting in said election. And it shall be the duty of the justices, who may hold the said election, within three days thereafter, to deliver or cause to be delivered to each of the trustees, so elected, a certificate of his election, under their hands and seals. And each of the said justices, shall be allowed one dollar per day, during the time they may be engaged in holding the said election, to be paid by the said trustees, out of any money which may be levied and collected under the direction of this act.

First election to  
be holden by  
two justices.

To appoint a  
clerk and deli-  
ver certificates  
to the persons  
elected.

Allowance to  
justices & how  
paid.

Sec. 4. *And be it further enacted*, That the two justices who hold the said election, shall be appointed by the county court of Barren; and the said justices, when so appointed, shall give ten days previous notice of the day of such election, at least at three of the most public places in the said town; and it shall be the duty of the said justices, who may hold the said election, to return to the clerk, to be by them appointed pro tem. the names of the trustees which may be elected, and which shall be by him recorded in a journal, to be provided for that purpose; and the said trustees, before they act as such, shall take an oath, to be administered by any justice of

Justices to be  
appointed by  
county court,  
to give notice  
of the election  
and to return  
the names of  
trustees.

Trustees to  
take oath.

1808.

the peace, to discharge the duties of their office as trustees, without favor, partiality or affection.

To meet and appoint a clerk.

Sec. 5. The said trustees, shall on the first Saturday after the said election, meet at the court-house in said town, and at such other times and places, as they may think necessary, for the internal policy of said town.

And the said trustees or a majority of them, at their first meeting, shall appoint a clerk, who shall hold his office until the next annual election, but for good cause may be removed; and the clerk so appointed, before he enters on the duties of his office, shall take an oath, to be administered by either of the trustees, that he will, to the best of his skill and ability, make true entries of the proceedings of the said board of trustees, and that he will safely keep the books and papers given him in charge; and shall moreover, acknowledge himself to be responsible to the said board of trustees and their successors, for any neglect or malfeasance in office, and entry thereof shall be made on the journals of said

Clerk to administer oath to witnesses and to issue subpoenas.

board; and the clerk of said board, is hereby authorised to administer an oath to any person, who may come before the said board to give testimony, and is hereby, also, authorised to issue a subpoena or subpoenas, on the application of either of the trustees for any witness or witnesses, whose testimony may be deemed necessary in any matter of controversy depending before the said board, which subpoena may be directed to any sheriff or constable of the county, where such witness may reside,

Duty of sheriff or constable.

whose duty it shall be, to execute and return the same; and if any witness, so summoned, shall fail to attend the

Penalty on witness failing to attend.

said board, he or she shall be fined by the said board in any sum not exceeding three dollars, unless good cause shewn for such failure, he or she having been first summoned to shew cause.

Penalty of sheriff or constable

And if any sheriff or constable, who shall receive any subpoena, shall fail to execute and return the same, he shall be fined in any sum not exceeding fifteen dollars, unless he can shew good cause why the same was not executed and returned, having been first summoned for that purpose.

Compensation to clerk.

And the said board are authorised to make their clerk such compensation for his services, as they may deem reasonable, to be paid out of any money which may be collected under this act.

## XVII. YEAR OF THE COMMONWEALTH.

27

Sec. 6. And the said board, at their first meeting, shall cause their clerk to enter on their journals the certificate of their election; they shall also, at their first meeting, choose a president from their own body, who shall be styled the president of the board, and shall hold his office until the end of the next annual election, and a president shall be then chosen at the first meeting after each annual election.

1808.

Trustees to cause their certificate to be entered and to choose a president.

Sec. 7. The said board of trustees may, and they are hereby authorised, at such time as they may think proper, to appoint a commissioner, for the purpose of obtaining a list of each individual's property, both real and personal, within said town and the limits aforesaid; which commissioner, before he enters on the duties of his office, shall take an oath, to be administered by some justice of the peace or one of the said trustees, that he will to the best of his skill and ability, without favor, affection or partiality, discharge the duties enjoined on him, that is, that he will immediately and without delay call on each person whose property may be subject to taxation under this act, for a written list of his or her property, and such as he or she may superintend for the true owner, which list being read over by the said commissioner to the person delivering the same, he or she shall make oath or affirmation, to be administered by said commissioner, to the truth of the same; and the said commissioner shall value the property so listed, and note the valuation thereof in the said list; and any person or persons who shall hold property in his, her or their own right, or as agent for another, shall refuse to give a list thereof, or shall give a false or fraudulent list, shall be fined by the said board in any sum not exceeding ten dollars, to be appropriated in the manner hereafter directed; and said commissioner shall make a return of the said list of taxable property to the said board, or some member thereof, within three months after his appointment or commission to take such list, under the penalty of twenty-five dollars: *Provided however*, that any person that may think himself aggrieved by the valuation of such commissioner, may appeal to the board of trustees at their next meeting, who, if they see cause, may reduce such valuation.

To appoint a commissioner.

His duty.

Fine for refusing or giving fraudulent lists.

Person injured may appeal to the board.

Sec. 8. Any person who shall be guilty of running or racing horses in or through the streets of the said town,

Penalty for running horses, &c.

1808.

or shooting at a mark or throwing long bullets within said town, shall for every such offence, if a white or free person, be subject to a fine not exceeding two dollars, to be sued for in the name of said trustees, before any justice of the peace, and to be applied as hereafter directed; and if a slave, to be whipped at the discretion of any justice of the peace, with any number of lashes not exceeding fifteen. And in all cases where any fine may be imposed upon any infant or apprentice, under this act, for a violation of any of the provisions contained in this section, that the father of such infant, and the master of such apprentice, shall be accountable for such fine, and process may issue against such father or master in the same manner as if either of them had been guilty of the offence.

Trustees to appoint a collector and his duty.

Sec. 9. And the said trustees, when they have laid and assessed the taxes on the property valued as aforesaid, may appoint a collector of the same, whose duty it shall be to collect and account for and pay over the same to the board of trustees within three months after a list thereof shall be put into his hands; deducting therefrom such compensation as the board of trustees shall agree to allow him. And it shall be the duty of the clerk to deliver such lists to the collector, and if any person shall refuse or fail to pay his or her part of said tax, agreeably to said list, the same being duly demanded, the collector is hereby authorised to seize and sell so much of his, her or their personal property as will be sufficient to pay the tax of such delinquent by him or her due and unpaid:

To give bond and security.

*Provided however,* that before the said collector shall proceed to the said collection he shall give bond and security to the said trustees, to be approved of by the president of the board, in the sum of five hundred dollars, conditioned for the due and faithful discharge of the duties of his office; and should the collector fail to comply therewith, and suit shall have been brought thereon, it shall be the duty of the officer executing the writ in such case, to endorse thereon the day or days on which he executed it; and when it shall appear from such endorsement that the writ was executed ten or more days before the return day thereof, the declaration may be filed in court, and judgment may be rendered at the return term; and when such collector and securities or either of them shall appear, they may join issue, other-

Suit may be brought thereon.



wise an interlocutory judgment may be entered and a writ of enquiry awarded, which may be executed at that or any subsequent term, and judgment rendered accordingly, which shall have the benefit of the several acts of jeoffails.

1808.

Sec. 10. And on the death, resignation or removal of any of said trustees or their successors, the remainder of the said trustees shall have power to appoint other persons to fill such vacancy; and they shall under their hands and seals certify to the county court of Barren, the names of the persons by them so appointed, which certificate shall be recorded by the clerk of said court.

Trustees to fill vacancies.

Sec. 11. And the clerk of the board of trustees shall on the order or judgment of the said board collect all fines imposed by this act, the collection of which is not otherwise provided for, and all fines imposed for breaches of the by-laws of said town. And in the said collection he shall be governed by the same rules and regulations under which money is collected by virtue of any writ of *fieri facias*: *Provided nevertheless*, that no person on whom a fine shall be imposed under this act, shall have a right to replevin. And the said clerk shall pay all sums by him collected to the president of the board at their next meeting after he may have collected the same, and the money so collected shall be appropriated to the use of said town, in keeping and repairing the streets and roads within the limits aforesaid, and such other regulations as said trustees may deem expedient for the benefit of said town: *Provided however*, that nothing herein contained shall prevent the plaintiffs from proceeding in the ordinary way, where they shall deem it expedient.

Clerk to collect fines.

This act shall commence and be in force from and after the passage thereof.

#### CHAPTER XXXV.

*An ACT authorising the Trustees of Lexington to levy and collect Money for certain purposes.*

Approved February 1, 1809.

The purposes were, purchasing and repairing fire engines and other utensils for the extinguishment of fire.

## DECEMBER SESSION,

1808.

## CHAPTER XXXVI.

*An ACT to repeal so much of every act as authorises public remuneration for losses by fire in Warehouses.*

Approved February 1, 1809.

The act mentioned will be found in Vol. II, page 137.

*BE it enacted by the general assembly,* That the twenty-fourth section of the act passed February 20, 1798, entitled "an act to amend and reduce the several acts of assembly for the inspection of tobacco into one act," and every other part of the same act, and of every other act or acts, as shall authorise or require the public to pay for losses or injury for warehouses, or tobacco or other property consumed by fire, or otherwise destroyed or injured in or about warehouses or inspections, shall be and the same is hereby repealed.

This act shall be in force from its passage.

## CHAPTER XXXVII.

*An ACT to repeal the acts making compensation for the killing of Wolves.*

Approved February 1, 1809.

*BE it enacted by the general assembly,* That every act or parts of acts, that heretofore authorised a reward for the killing of wolves, shall be and the same are hereby repealed, any law to the contrary notwithstanding.

This act shall commence and be in force from the passage thereof.

## CHAPTER XXXVIII.

*An ACT authorising Archibald Northcut to build a Dam across Green River.*

Approved February 1, 1809.

WHEREAS it is represented to this general assembly, that it would be a great benefit to a number of the citizens of Casey county, to permit a grist-mill to be erected on Green river, near the court-house of said county; and as Archibald Northcut hath petitioned the legislature for leave to build a dam across Green river, near the court-house aforesaid, for the use of a grist-mill: therefore,

Sec. 1. *Be it enacted by the general assembly, That* 1808.  
 Archibald Northcut is hereby authorised to build a dam  
 across Green river, near and above the court-house of To build mill  
 Casey county, on conditions that said dam shall be built conditionally,  
 of such a height or on such a plan that the navigation of  
 said stream shall not be obstructed thereby.

Sec. 2. *And be it further enacted, That if said dam,* If navigation  
 when built, shall be thought to injure the navigation of injured com-  
 said stream, on complaint to the county court of said plain to county  
 county, it shall be the duty of said court to hear such court,  
 complaint, on condition that the owner of said dam shall  
 have had ten days previous notice in writing that such com-  
 plaint would be made; and if it shall appear to said court  
 that the dam doth injure the navigation of said stream,  
 it shall be the duty of said court to order and direct the Duty of county  
 owner or occupier of said mill and dam to have such court.  
 dam so altered or taken down that the navigation of the  
 river shall not be obstructed by it; and if the owner of  
 such dam shall not within three months from the time When dam  
 of making such order by the court, have said dam re- deemed a nui-  
 moved or so altered that the navigation shall not be in- sance.  
 jured by it, said dam shall be deemed a nuisance, and  
 treated accordingly: *Provided however,* that a majority  
 of all the justices of the peace for said county shall be  
 present when the court shall or may determine that said  
 dam doth injure the navigation of said river.

This act shall be in force from its passage.

#### CHAPTER XXXIX.

*An ACT concerning the Town of Jefferson, in the  
 County of Jefferson.*

Approved February 1, 1809:

WHEREAS it is represented to the general assembly,  
 that the inhabitants and proprietors of lots of Jefferson Preamble.  
 town, in the county of Jefferson, are laboring under cer-  
 tain inconveniences:

Sec. 1. *Be it enacted by the general assembly, That* Trustees to be  
 the owners of lots of said town shall, on the third Sa- elected.  
 turday in August annually, elect five fit persons as trus-  
 tees for said town, and establish such rules and regula-  
 tions respecting the police of said town, as to them seem  
 best; which said trustees, when elected, shall possess Their powers.

1808. the same power and perform the same duties as the trustees heretofore appointed. The return of persons so elected shall be made to a clerk, to be appointed by the said trustees, and by him recorded in a journal to be provided for that purpose. In all future elections the election shall be conducted by one or more of the then acting trustees, to be appointed for that purpose, and ten days previous notice thereof shall be given by the clerk of said board, in the most public places in said town; and the return of persons so elected shall be made to the clerk of said board, and by him recorded in their journal.

To whom return of election made. The said trustees, before they proceed to business, shall take an oath to discharge the duties of their office as trustees, without favor, affection or partiality; and the clerk of said board shall have power to administer the oath, as also oaths to any person or persons coming before the board under the direction of this act. All vacancies, occasioned by death, resignation or otherwise, of any of the said trustees aforesaid, shall be supplied by an election to be holden as aforesaid, on some day named by the clerk of said board. The said board shall appoint a clerk, who shall hold his office until the next annual election for trustees, but for good cause may be removed; and the clerk so appointed, before he enters upon the duties of his office, shall take an oath, to be administered by the chairman of said board, that he will to the best of his skill and ability, make true entries of the proceedings of said board, and that he will safely keep the books and papers given him in charge, and shall moreover acknowledge himself responsible to said board for any neglect or malfeasance in office; and an entry thereof shall be made on the journal of said board. The

Elections how conducted. said trustees shall have power to levy and enforce the collection of a tax, not exceeding fifty dollars annually, on the titheables and property, both real and personal, within said town, if they think it necessary, and shall apply the said tax to such purposes as they shall deem proper for the benefit of said town. The said trustees, when they have laid and apportioned the tax on the property assessed, shall appoint a collector, whose duty it shall be to collect and account for such tax within three months after a list of the same shall be put in his hands; and if any person shall refuse to pay the same, the said collector shall have power to seize and sell so

Oath of the trustees.

By whom administered.

Vacancies how filled.

Clerk to be appointed.

His oath.

Trustees may levy taxes.

Collector to be appointed.

His power and duty.

much of his property as will be sufficient to make the tax by him or her due, and the collector shall deliver the money so collected to the trustees, or the person who may be appointed by them to receive, deducting therefrom such compensation for his services as the said board shall have agreed to pay him: *Provided however,* To give bond and security. that before the said collector shall proceed to business, he shall give bond with sufficient security, payable to the trustees, in the penalty of one hundred dollars, for the faithful discharge of the duty of his office, and should he fail to comply with the condition of said bond, the county court of Jefferson county, which is hereby specially County court of Jefferson may on motion give judgment thereon. authorised and empowered, may on application or motion of the clerk of said board, give judgment and award execution against said collector for such sum or sums, with ten per cent. damages on the same.

Sec. 2. *Be it further enacted,* That whosoever shall be guilty of running or racing horses in the streets, playing or throwing bullets, or shooting at marks within the limits of said town, such person shall for every such offence, if a free person, forfeit and pay the sum of two dollars, to be sued for and recovered in the same manner as sums of the same amount are now recovered by law; and if a slave, he shall be whipped at the discretion of a justice of the peace, on his or her bare back, not to exceed ten lashes. The trustees shall have power to call Persons running horses, &c. how punished. on the male titheables of said town for the purpose of working on the streets leading through said town, and for removing nuisances, under the superintendence of a Titheables to work on streets. surveyor or overseer, to be appointed by said board, Overseer to be appointed. whose duty it shall be, when directed by the board, to His duty. call upon the said titheables to meet on some day and at a certain place, with tools for the purpose aforesaid; and every such person failing to attend so equipped, or who Titheables, for failure to be fined. shall refuse to labor under the direction of said overseer, or to find some person equally able to work in his room, provided he hath three days notice of the time and place aforesaid, shall pay a sum of one dollar and twenty-five cents, to be sued for and applied for the benefit of said town; and the inhabitants of that town shall not be compelled to work on any road more than one mile out of Exceptions of the inhabitants. the limits thereof, except on the road leading from said town to Middletown, on which road they shall work under the surveyor who is appointed by the court of the

1808. county, like other titheables. The trustees aforesaid shall have power to make any by-law or laws, rules and regulations for the opening and clearing of any alley, and for the internal government of said town in general, as they may deem expedient, not inconsistent with the provisions contained in this act, or the constitution or laws of this state or of the United States; and all fines as are pointed out in the provisions of this act, shall be sued for in the name of the trustees for the town of Jefferson, under their direction or the direction of some person appointed for that purpose, and the money recovered thereby shall be applied to such purposes for the benefit of said town, as they shall deem proper.

Trustees may make by-laws.

Fines, how recoverable.

How applied.

This act shall commence and be in force from and after the first day of May next.

#### CHAPTER XL.

*An ACT directing the President of the Bank of Kentucky annually to certify to the Auditor the amount of interest on certain redeemed warrants.*

Approved February 1, 1809.

*BE it enacted by the general assembly,* That the President of the Bank of Kentucky be, and he is hereby required, between the third and tenth days of November annually, to certify to the Auditor of public accounts the amount of monies paid by the Treasurer for interest on warrants redeemed by him within a year, ending on the said third day of November, from said Bank, which certificate shall be entered by the Auditor, to be used, if necessary, in the settlement of the Treasurer's accounts.

This act shall be in force from and after its passage.

#### CHAPTER XLI.

*An ACT to amend the several acts concerning the proceedings in Chancery.*

Approved February 1, 1809.

The act here alluded to is one passed in the session of 1807, and is found in Vol. III, page 501: the third section contains the provision here repealed.

*Sec. 1. BE it enacted by the general assembly,* That so much of every act of assembly as directs that chancery causes shall be placed on the court docket after common law causes, shall be and the same is hereby repealed.

## XVII. YEAR OF THE COMMONWEALTH.

35

Sec. 2. *Be it further enacted*, That the chancery causes in the circuit courts shall be docketed for the term generally, without setting them to particular days, and at convenient times throughout the term the court may act upon them.

1808.

This act shall commence and be in force from its passage.

### CHAPTER XLII.

*An ACT to amend the Law for the recovery of Debts cognizable before a Justice of the Peace.*

Approved February 1, 1809.

Sec. 1. *BE it enacted by the general assembly*, That Defendant to in trials in cases of debt or account before a justice of answer on oath. the peace, it shall be lawful for the plaintiff to require the defendant to answer on oath to the charge; but if the defendant shall thereupon deny the same, the plaintiff shall not have judgment unless he shall establish his claim by two or more credible witnesses, or at least by one credible witness with corroborating circumstances; and where- If denied, plain- tiff to prove the same. ver the defendant shall allege matter in avoidance of the plaintiff's demand, he may in like manner, and Plaintiff to an- swer defendant's declarations on oath, subject to the like rules, require the plaintiff to answer such allegations on oath; and on neglect or refusal to attend, or answer after summons, the justice may use attachment and compulsory proceedings for contempt, so as to procure confessions according to the true intent and meaning hereof.

Sec. 2. The foregoing provisions shall be observed in the trials of appeals in the county courts; but nothing in this act shall be construed to authorise either party to be sworn, unless thereto required by the adverse party. In cases of ap- peals to the county court.

This act shall be in force from and after the first day of May next.

### CHAPTER XLIII.

*An ACT to incorporate the New-Castle Library Company.*

Approved February 1, 1809.

Sec. 1. *BE it enacted by the general assembly*, That William Butler, Rowland Thomas, Isham Henderson, John Stites, jun. Robert Teter, Samuel M'Kinley, Wil- Trustees ap- pointed and in- corporated. liam Neal, Thomas S. Wingate and Joel Jackson, and

1808.	their successors duly appointed as is hereinafter directed, be and they are hereby constituted a corporation and body politic, to have continuance for ten years, by the style of the trustees of the New-Castle Library Company.
Style of corporation.	
What vested therein.	Sec. 2. <i>And be it further enacted,</i> That all sums of money, books, goods or chattels, in possession of, or that are now due, by subscription, contract or otherwise, or may hereafter be subscribed for the use of said company, is hereby vested in said corporation, and that they may receive any gift, grant or bequest of money, books, goods or chattels which are made by any person or persons capable of making said gifts or grants, all which
May receive donations.	sums of money, goods and chattels to be laid out in books, maps, charts, &c. for the benefit of said corporation agreeably to the intention of the donors.
How disposed of.	Sec. 3. <i>And be it further enacted,</i> That the said corporation, by the style aforesaid, shall be capable in law to sue and be sued, plead and be impleaded, before any court or courts, or before any judge or justice of this commonwealth, or elsewhere, in all manner of suits, actions or complaints of any kind whatsoever, in as full and effectual a manner as any other person or persons, corporation or bodies politic may or can do.
Legal capacity, powers and privileges.	Sec. 4. <i>And be it further enacted,</i> That the said corporation shall have power to use a common seal, and the same to break and renew at pleasure ; to appoint a librarian, secretary and treasurer ; to appoint their duty and fix their compensation ; to remove them from office and appoint others in their place, as often as they think fit ; to make such by-laws as may be useful to the institution, and the same to alter and abrogate at pleasure ; to fix the price of new shares and annual contributions ; to fill any vacancy that may happen in their number between two annual meetings ; to levy and collect fines and forfeitures, and to determine and transact all business appertaining to said corporation or said company, agreeably to the rules, ordinances and by-laws thereof, during their continuance in office. <i>Provided, however,</i> that not less than five of the trustees shall be a quorum to do business ; that no by-laws shall be made repugnant to the laws of this commonwealth.
To appoint librarian, &c.	Sec. 5. <i>And be it further enacted,</i> That there shall be an annual meeting of the members of said company at
Make by-laws.	
Fill vacancies.	
Proviso.	
Place of meeting.	



the library or other suitable place as the trustees may direct, of which the trustees shall cause at least thirty days notice to be given by advertisements at the doors of the most public houses in the town of New-Castle; at which time and place the members, or such of them as are present, either personally or by proxy, evidenced by the hand-writing of the shareholder, shall elect by ballot nine trustees out of their number, to serve for the year next ensuing their election, and until others shall be elected to fill their place, and consent to serve: *Provided always*, that a majority of the shareholders, either personally or by proxy, shall be necessary to elect the trustees; that each shareholder shall be entitled to one vote for each share he may hold, provided the number does not exceed five, and no person shall be entitled to a vote who is in arrears to the said institution, either by fine, forfeiture or contribution.

1808.

To elect successors.

Sec. 6. *And be it further enacted*, That the first election for trustees shall be held on the first Saturday in March next, and on the first Saturday in March in every year thereafter, and in case a majority of the members should not appear to choose trustees at the times appointed, the elections shall be held thereafter as the attendance of the majority can be obtained for that purpose, previous notice thereof being given as aforesaid.

Elections, when to be held.

Sec. 7. *And be it further enacted*, That each shareholder shall be at liberty to transfer or relinquish his share or shares, and shall be forever thereafter released from all contributions on account thereof.

This act shall be in force from and after its passage.

#### CHAPTER XLIV.

*An ACT to legalize the proceedings of the County Court of Pendleton, at their December term 1808, and authorising the County Court of Knox to appoint Commissioners.*

Approved February 1, 1809.

The proceedings of the Pendleton court was laying the levy without a majority of the justices. The court of Knox having failed to appoint commissioners of the revenue at the proper time, were permitted to do it in March, then next ensuing.

1808.

## CHAPTER XLV.

*An ACT for the relief of Ephraim Dicken and James Kincaid, assignee, &c.*

Approved February 1, 1809.

They were proprietors of head-right claims. This act relieved them from the consequences of some mistakes.

## CHAPTER XLVI.

*An ACT to repeal so much of the act concerning titheables as subjects white male titheables over the age of sixteen and under twenty-one years to the payment of County Levy.*

Approved February 1, 1809.

*BE it enacted by the general assembly,* That so much of all laws as subjects white males over the age of sixteen and under the age of twenty-one years, to the payment of county levy, shall be and the same is hereby repealed: *Provided however,* that this act is not to affect any county levy laid before this act shall be in force.

This act to be in force from the first day of May next.

## CHAPTER XLVII.

*An ACT to repeal so much of every act as declares Eagle Creek a navigable stream.*

Approved February 1, 1809.

*BE it enacted by the general assembly,* That from and after the passage of this act, so much of every act as declares any part of Eagle creek to be a navigable stream and public highway, shall be and the same is hereby repealed.

This act shall commence and be in force from and after its passage.

## CHAPTER XLVIII.

*An ACT requiring the Register to pay into the Treasury quarterly certain Monies.*

Approved February 1, 1809.

*BE it enacted by the general assembly,* That from and after the passage of this act, the register of the land-office shall pay into the treasury quarterly, the monies

due this commonwealth, arising from the fees of his office, any law to the contrary notwithstanding.

1808.

This act shall commence and be in force from and after the passage thereof.

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CHAPTER XLIX.

*An ACT to repeal the provisionary clause of the act establishing the County of Harrison.*

Approved February 4, 1809.

*BE it enacted by the general assembly, and it is hereby enacted,* That so much of an act for dividing the county of Bourbon, which was approved on the 21st day of December 1793, which provides that the said county of Bourbon shall remain nineteen miles wide in the narrowest part, shall be and the same is hereby repealed.

This act shall commence and be in force from and after its passage.

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CHAPTER L.

*An ACT for the better regulation of the Town of Danville.*

Approved February 8, 1809.

WHEREAS it is represented to the present general assembly, that the several acts heretofore passed concerning the town of Danville, in the county of Mercer, have been found ineffectual for the regulation of said town; therefore,

Preamble.

Sec. 1. *Be it enacted by the general assembly,* That John Rochester, James Birney, Joshua Barbee, Richard Davenport, Jeremiah Clemons, Jeremiah Fisher, Ephraim M'Dowell, Daniel M'Ilvoy and Dennis Brashers, gentlemen, are hereby appointed trustees of said town of Danville, to continue in office until the first election of trustees hereafter provided for by this act. The said trustees hereby appointed, shall, before they proceed to act as such, severally take an oath, to be administered by any justice of the peace, faithfully to discharge the duties of such office, without partiality, favor or affection. Their first meeting shall be in the courthouse in said town, on the first Wednesday in April next: *Provided however,* that if a majority of them shall not attend at the time and place aforesaid, they may ne-

Trustees appointed.

First meeting.

1808. vertheless hold their first meeting at such other time and place as they may think fit. The said trustees, or a majority of them, at their first meeting shall appoint a clerk, to hold his office until the next election of trustees and until another shall be appointed, but for good cause may be removed and another chosen. The clerk, before he enters on the duties of his office, shall take an oath, to be administered by either of the trustees, that he will to the best of his skill and ability make true entries of the proceedings of the said board of trustees, and that he will safely keep the books and papers given him in charge, and shall moreover acknowledge himself to be responsible to the said board of trustees and their successors for any neglect or malfeasance in office, and an entry thereof shall be made on the journals of said board; and the clerk of said board is hereby authorised to administer an oath to any person who may come before said board to give testimony.

Sec. 2. The said trustees, or a majority of them, shall at their first meeting choose a president from their own body, to be styled the president of the board, who shall hold his office until the next election of trustees, and in case of his absence at any meeting, a president pro tem. may be chosen for that occasion.

Sec. 3. The said board after being organized may hold their meetings at such times and places as they may think proper, and shall have full power to make such by-laws for the government of the market and regulation of said town, as they may deem necessary, not inconsistent with the constitution or laws of this commonwealth.

Sec. 4. The said trustees, or a majority of them, and their successors, shall have power to levy and enforce the collection of a tax not exceeding three hundred dollars annually, on the titheables and property, both real and personal, within the said town and within half a mile from the centre of the public square, and shall have a lien on such property until the tax thereon be paid, and shall apply the said tax to such purposes as they may deem proper for the benefit of said town.

Sec. 5. The said board of trustees may and they are hereby authorised, at such time as they may think proper, to appoint a commissioner for the purpose of obtaining a list of each individual's titheables and property, both real and personal, within said town and the limits

aforesaid ; which commissioner, before he enters on the duties of his office, shall take an oath, to be administered by some justice of the peace, or one of the trustees, that he will to the best of his skill and ability, without favor, affection or partiality, discharge the duties enjoined him ; that is, that he will immediately and without delay call on each person whose property may be subject to taxation under this act, and the agents, if any, of those who hold property in said town or limits, and do not reside within the same, for a list of his or her titheables and property ; which list being corrected, if necessary, and distinctly read over by the commissioner to the person delivering the same, he or she shall make oath or affirmation, to be administered by the said commissioner, to the truth of such list, and the commissioner shall value the property so listed and note the amount of such valuation on such list ; and in case of neglect or refusal on the part of the person so called upon to give a list as aforesaid, or in case of a person holding property in said town, but residing without the limits aforesaid, and having no agent therein, it shall be lawful for the commissioner to make out a list thereof from the best information he can procure, and to fix the valuation thereof as aforesaid ; and any person properly called on who shall refuse to give such list, or shall give a false or fraudulent one, shall be fined by the said board in any sum not exceeding twenty-five dollars, to be appropriated as hereafter directed ; and the said commissioner shall make return of the lists of titheables and taxable property to the said board, or some member thereof, within three months after his appointment, under the penalty of three hundred dollars : *Provided however*, that any person who may think himself or herself aggrieved by the valuation of such commissioner, may appeal to the board of trustees, who if they see cause may reduce such valuation.

Sec. 6. And the said trustees, when they have laid and apportioned the tax on the property assessed and valued as aforesaid, are hereby authorised to appoint a collector, whose duty it shall be to collect and account for such tax within three months after a list of the same shall be put into his hands ; and if any person shall refuse to pay the tax due from such person, the said collector shall have power to seize and sell so much of his

1808.

His oath.

His duty.

Persons giving  
a fraudulent list  
finable.Trustees may  
appoint a col-  
lector.

His duty.

May distrain

1803. or her property as will be sufficient to make the sum due from him or her as tax; and the collector shall deliver the money so collected to the president or clerk of the board of trustees, deducting therefrom such compensation for his services as the said board shall have agreed to pay him: *Provided however*, that before the said collector shall proceed to business he shall give bond with sufficient security, to be approved of by the board, in the penalty of five hundred dollars, for the faithful discharge of the duties of his office; and should he fail to comply with the conditions of said bond, the county court of Mercer, which is hereby specially authorised and empowered for that purpose, may on application or motion on the part of the board, give judgment and award execution against said collector and security for such sum or sums, with fifteen per cent. damages on the same, ten days previous notice being given to such delinquent collector of such motion.

County court of Mercer may give judgment thereon on motion.

Sec. 7. The said board of trustees are hereby authorised to lay such fine, not exceeding ten dollars, as they shall deem proper, for a breach of such by-laws, rules and regulations as they may adopt under this act; and all fines by them imposed, together with such as are pointed out by this act, (the collection of which is not otherwise provided for) shall be sued for in the name of the board of trustees for the town of Danville, under their direction or the directions of some person appointed for that purpose, and the money recovered shall be applied to such purposes for the benefit of said town as they may deem expedient: *Provided*, that no replevin shall be allowed on any judgment recovered by said board of trustees for any fine or penalty under this act.

Trustees may impose fines.

How sued for.

How applied.

Sec. 8. Any person who shall be guilty of running or racing horses in the streets, playing or throwing long-bullets, or shooting at a mark within said town, shall for every such offence, if a white or free person, be subject to a fine not exceeding five dollars, and if a slave, shall be whipped at the discretion of a justice of the peace, with any number of lashes not exceeding fifteen. Any fine imposed by or under this act, on an apprentice, infant or slave, shall be paid by the master, father or guardian.

Penalty for racing horses.

Sec. 9. The clerk of the board is hereby authorised to issue a subpoena or subpoenas, on the application of either of the trustees, for any witness or witnesses whose tes-

Clerk may issue subpoena.

timony may be deemed necessary in any matter depending before the said board ; which subpoena or subpoenas may be directed to any sheriff or constable of the county where such witness may reside, whose duty it shall be to execute and return the same : and if any witness so summoned shall fail to attend, he or she may be fined by the said board in any sum not exceeding five dollars, unless he or she shall shew good cause why he or she did not attend, having been first summoned to shew cause : and if any sheriff or constable, who shall receive any such subpoena, shall fail to execute and return the same, he shall be fined by said board in any sum not exceeding ten dollars, unless he can shew good cause for such neglect, having been first summoned to shew cause.

1808.

Directed to the-  
riff or constable.Sheriff or con-  
stable fined for  
neglect.

Sec. 10. The said board are authorised to make such allowance as they may deem proper to their commissioner, their collector, or their clerk, to be paid out of any money to be collected under this act.

Allowance to  
be made to cer-  
tain persons.

Sec. 11. A majority of the whole number of trustees shall at all times be a sufficient number to proceed to business.

Sec. 12. *And be it further enacted,* That it shall be lawful for all the free white male inhabitants of the town of Danville, and within half a mile of the centre of the public square in said town, aged twenty-one years or upwards, to elect on the first Wednesday in April 1810, and on that day annually afterwards, nine trustees for said town. The first election shall be held in the court-house in said town, and shall be conducted by one or more of the trustees appointed by this act, to be selected by the board for that purpose ; ten days previous notice of such election shall be given by the president of the board, in writing, set up at three of the most public places in said town ; and the return of persons so elected shall be made to the clerk of the board for the time being, and by him recorded in their journal. All subsequent elections shall be held under the superintendence of one or more of the board for the time being, in the same manner, at such place in said town as the board shall have fixed on at the time they may select the conductors of such elections ; the same notice shall be given and the return made in the same way.

Election to be  
held for trustees  
and the qualifi-  
cation of voters.Notice to be giv-  
ven.Return of per-  
sons elected.

Sec. 13. No person shall be eligible as a trustee, or qualified to act as such, if elected, unless he shall have

Qualification of  
trustees elected.

1808. attained to the age of twenty-one years, shall be the fee simple owner of real property in said town or limits aforesaid, and shall reside within one mile of the limits of said town.

**Their powers.** Sec. 14. The trustees to be elected by the inhabitants as aforesaid, shall have the same powers, to choose their president, appoint their clerk, their commissioner, their collector, to levy the same annual tax, impose fines, make by-laws, and to do every other thing which the trustees appointed by this act are authorised to do. And the officers to be by them appointed shall have the same powers and be governed by the same regulations which are prescribed as to those to be chosen by the trustees appointed by this act.

**Vacancies, how filled.** Sec. 15. If any vacancy shall happen by death, removal, resignation, or otherwise, either in the board of trustees hereby appointed, or any subsequent board to be elected; the board for the time being, are hereby authorised, to choose any person qualified under this act, to fill such vacancy, to remain in office till the next annual election.

**Clerk accountable for monies in his hands.** Sec. 16. The board of trustees for the said town, for the time being, shall have the right at all times, to call on their clerk, or any clerk of any former board, for any money in his hands, which may have been collected for the use of said town, and which may be unappropriated; and should he fail to pay the same, the county court of Mercer, is hereby authorised to give judgment for the same, with fifteen per cent. damages, on motion, in the name of said board, against such delinquent: Provided, such clerk shall have ten days previous notice in writing of such motion.

**County court of Mercer may give judgment on motion,**

All acts or parts of acts, coming within the purview of this act, shall be, and the same are hereby repealed. This act shall be in force from its passage.

## CHAPTER LI.

*An ACT to alter the time of meeting of the General Assembly.*

Approved February 8, 1809

*BE it enacted by the general assembly, That hereafter the General Assembly shall meet on the first Monday*



in December annually, any law to the contrary notwithstanding.

1808.

This act shall be in force from its passage.

## CHAPTER LII.

*An ACT to amend the law respecting Cut Money.*

Approved February 8, 1809.

Sec. 1. *BE it enacted by the general assembly*, That the auditor of public accounts, when he shall deem it beneficial, may enter into a negotiation with the president and directors of the Bank of Kentucky, for the exchange of such cut silver as may from time to time be in the public treasury, for small round silver coin, on such terms as they may agree on, and not exceeding a discount of three per cent. on the cut silver, and the auditor shall give the treasurer credit for such sums as he loses in consequence of making the exchange, and it shall be the duty of the auditor to report to the succeeding general assembly, the amount of the sum or sums so exchanged, and the terms on which the exchange was made.

Sec. 2. *And be it further enacted*, That when any collector of public money shall be about to pay cut money into the public treasury, such cut money shall be subject to a discount of three per centum, unless he shall verify on oath, that the cut money so offered was actually received by him in making the said collection.

Sec. 3. *And be it further enacted*, That the treasurer hereafter in giving receipts for money, shall express therein whether any or what cut money was received, and whether any or what discount was allowed thereon.

Sec. 4. *Be it further enacted*, That from and after the first day of April in the year 1812, no cut silver shall be received into the public treasury in discharge of any revenue or debt due this commonwealth.

This act shall be in force from its passage.

## CHAPTER LIII.

*An ACT for the better regulation of the Town of Winchester in Clarke County, and Versailles in Woodford County.*

Approved February 8, 1809.

Sec. 1. *BE it enacted by the general assembly*, That the trustees of the town of Winchester in the county of

1808. Clarke, who are now in office, shall continue in office as trustees of the said town until the first Monday in June next; on which day annually, there shall be an election held at the court-house in said town, for the election of trustees, which shall be conducted by the clerk of the trustees then in office, and under their direction; and the said clerk shall give public notice of the same by advertisement at the court-house door, and other public places in said town, one month next preceding the election in each year; and it shall also be the duty of the clerk when the election is closed to enter on record in the book kept by him for the trustees of said town, the names of those persons duly elected as trustees aforesaid.

Election of trustees.

Notice thereof.

Qualification of voters.

Clerk to be appointed.

Power of trustees.

Sec. 2. *And be it further enacted,* That it shall be lawful for all the free male inhabitants living in said town and limits thereof, as also those who may be the owner of any lot or lots in the same, who are of the age of twenty-one years, and entitled to vote in the election of a representative to the general assembly of Kentucky, to elect and choose annually, on the first Monday in June, five trustees; which election shall be conducted by the clerk, under the direction of the trustees as aforesaid. And the trustees of said town may elect their own clerk, who shall not be removed from office for one year next succeeding his election, unless for improper conduct in discharging the duties of his office, then in that case the trustees as aforesaid, may remove him from office, and proceed to the election of another.

Sec. 3. The said trustees shall have the power to make conveyances in the same manner, as the present trustees in office now have, also regulate and repair the streets and highways in said town, to remove nuisances and obstructions therein, at the expence of the party who occasioned them, provided the party or parties will not remove them on receiving notice from the trustees aforesaid; and when such person or persons fail, after having notice given them, to remove such nuisances or obstructions, the trustees shall, on failure thereof, immediately proceed to have it done, and when done the trustees of said town may proceed by warrant before some justice of the peace of said county, for the recovery of such sum or sums of money as may accrue in the removal of such nuisances or obstructions in said

## XVII. YEAR OF THE COMMONWEALTH.

47

town; and also to impose taxes (for such special purposes as tend to the improvement of said town) in any manner they may deem the most equitable, not exceeding the sum of one hundred dollars annually, on the titheables and property real and personal within said town, and also to make such provisions and regulations as they may deem proper, for the collecting and accounting for the taxes so imposed, by appointing a collector and directing a distress to be made in like manner as that of collecting the revenue, in cases of delinquencies, and to make such by-laws, ordinances and regulations, not contrary to the laws and constitution of this commonwealth, as shall by a majority of them be thought from time to time necessary for said town, and carrying this act into effect.

1808.

Sec. 4. *And be it further enacted*, That no person shall be eligible to the office of trustee, who is not a freeholder and an inhabitant of said town. Qualification of trustees.

Sec. 5. *And be it further enacted*, That in cases of vacancies that may be occasioned by death, disqualification or otherwise, the remaining trustees shall as soon as may be, proceed to fill the vacancy from amongst the citizens of said town, who may be qualified as aforesaid; and when a trustee shall cease to be a freeholder and inhabitant or resident in said town, he shall be considered disqualified, and another elected in his stead. Vacancies, how filled.

Any acts coming within the purview of this act, shall be, and the same are hereby repealed.

The powers, regulations, privileges and directions granted or made in the foregoing act for the town of Winchester, shall apply in like manner and form to the town of Versailles in Woodford county.

This act shall commence and be in force from and after the passage thereof.

## CHAPTER LIV.

*An ACT making further provisions for the Town of Springfield in Washington County.*

Approved February 8, 1809.

WHEREAS it is represented to the present general assembly that the proprietor of the town of Springfield, did lay off and annex to said town several lots, after the

1808. establishment of said town by law, and the proprietor and inhabitants wishing to annex the same,

Sec. 1. *Be it enacted by the general assembly,* That the lots No. 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, and 140, be, and the same are hereby annexed and considered a part of the town aforesaid, and the trustees thereof are hereby authorised, and empowered to execute deeds of conveyance to the purchasers for the same.

Sec. 2. *Be it further enacted,* That the trustees aforesaid are hereby authorised to levy on the inhabitants and improved lots in said town, any sum not exceeding one hundred dollars annually, for the purpose of clearing and keeping in repair the streets, springs and well in said town.

This act shall commence and be in force from and after the passage thereof.

#### CHAPTER LV.

*An ACT for the relief of certain free Persons of Color.*

Approved February 8, 1809.

WHEREAS a law passed at the last session of the general assembly preventing the emigration of free negroes and mulattoes to this commonwealth, and it is represented to the present general assembly that a number of free colored people with their families did remove to this state and settle in Logan county after the passage of said law, but before the same was promulgated, and the said persons have petitioned for themselves and their families to be relieved from the pains and penalties of said recited act, and that their relations by marriage or otherwise may be permitted to remove and settle in this state : therefore,

*Be it enacted by the general assembly,* That the before recited persons and their families be and they are hereby released from all the pains and penalties of the before recited act, and their free relations by marriage or otherwise, and moreover permitted to remove to this commonwealth, provided such relations remove themselves and families to this commonwealth before the 25th day of December next, any laws to the contrary notwithstanding.

This act shall be in force from its passage.

## CHAPTER LVI.

1808.

*An ACT for the relief of Debtors.*

Approved February 3, 1809.

This act has long since expired ; it was a palpable violation of the constitution, but was acquiesced in.

Sec. 1. *BE it enacted by the general assembly, That* Defendant may if the defendant or defendants in any execution now issued or hereafter to be issued, on any judgment or decree, had or to be had, or in any execution now issued or to issue on any replevin bond, now in being, shall at or before the day of sale, tender sufficient security, to be bound with him to pay the amount, and also all costs, with lawful interest for the same, to the creditor or creditors, on such execution in one year ; then the sheriff or other officer shall immediately release the estate or body, as the case may be, of such defendant or defendants from such execution. replevy 1 year, giving bond and security.

Sec. 2. *And be it further enacted, That* if the defendant or defendants in any such execution as aforesaid, shall fail to give bond and security as aforesaid, it shall be the duty of the sheriff or other officer, holding such execution on the day of sale, to sell the estate, to wit : lands, slaves, and personal estate, or any of them, taken on said execution, at a credit of one year, taking bond and sufficient security, to be bound with the purchaser, to pay the amount of the purchase money, with lawful interest from the day of sale, to the creditor or creditors. Upon failure, the officer shall sell at 1 year's credit and take bond or the purchaser.

Sec. 3. *And be it further enacted, That* the bonds aforesaid, taken by virtue of this act, shall be returned within thirty days after the execution thereof, to the clerk's office or justice from whence the execution issued, and shall have the force of judgments, and on which, when due and unpaid, execution may issue in the name of the obligee, his or her executors or administrators, or in the name of the obligees, or the survivor or survivors of them, as the case may be ; and wherever an execution shall be issued on any such bond, the slaves, personal estate, and lands of the persons against whom such execution may issue, shall be sold for cash, for whatever price the same may bring ; and on every such execution, the clerk or justice shall endorse that no security shall be taken ; but in all cases where executions Bonds to be returned to the office. Its force.

1808.

Proviso,

issue on replevin bonds, within the purview of this act, the proper credits, if any, shall be endorsed thereon : *Provided, however,* that nothing herein contained shall subject lands to the payment of debts contracted prior to the 17th of December, 1792 : *Provided also,* that nothing herein contained, shall be construed to extend to any execution upon any judgment, obtained against a sheriff, coroner, or constable, or any collector of levies, or officers' fees, or public revenue, or for any debt to any public creditor, put into their or any other hands to collect, or to an execution upon any judgment obtained against an attorney, for money received by him for his client, or against a principal by his security, or any public debtor, or to an execution for any debt due to the penitentiary institution ; but the property taken or received under any such execution, shall be sold for cash on the day of sale, for what it will bring.

Condition.

Sec. 4. *And be it further enacted,* That the sheriff or other officer shall, in the condition of any bond taken under this act, state as the case may be, that the defendant or defendants have replevied for one year, or that having failed to give bond and security, that the said estate so sold, has been disposed of at a credit of one year.

Bonds assignable.

Sec. 5. *And be it further enacted,* That replevin bonds or bonds for the sale of property, taken within the purview of this act shall be assignable, and execution may issue in the name of the assignee or assignees, his, her or their executors or administrators, as the case may be.

Method of assignment.

Sec. 6. And to facilitate the transferring of such replevin bonds, or bonds for the sale of property, taken in pursuance of this act, it shall be lawful for the creditor to take from the clerk (or justice, as the case may be) one copy of such bond, (and assignment, if any) specially certified to be the copy on which transfers may be made ; and it shall be the duty of the clerk (or justice, as the case may be) when he shall issue a copy, thus certified, to endorse on the original bond, that such a copy hath been issued : but of each such replevin bond, one copy only, thus specially certified, shall be issued, and after the issuing thereof, it shall not be lawful to make the transfers on the original bond, but they shall be made on the copy, specially certified as aforesaid, and in such a case, no execution shall issue on the original

bond, until such special copy shall be returned and filed with the original: but if such copy shall be lost or destroyed, so that it cannot be returned, the court (on the same being satisfactorily proved) may by order give leave for execution to issue, as though the copy had been returned: *Provided however*, that nothing in this section contained shall be construed to affect replevin bonds, of which such special copy as aforesaid shall not have been taken out.

1808.

Sec. 7. This act shall commence and continue in force from its passage until the first day of April 1810, and no longer: *But provided nevertheless*, that all bonds taken under this act shall remain as valid and liable to be proceeded on according to the directions hereof after the said first day of April 1810. And all laws contravening the provisions of this act, shall be suspended during the continuance of this act.

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#### CHAPTER LVII.

##### *An ACT for the relief of Richard Wilmott.*

Approved February 8, 1809.

He had paid the state price and obtained a patent for land belonging to another man. This is said to have been owing to a mistake in assigning to him a wrong certificate. This act authorised the patent to be returned and a patent to issue on the proper certificate.

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#### CHAPTER LVIII.

##### *An ACT for the benefit of Elizabeth Worthington, and the heirs of Edward Worthington, deceased.*

Approved February 9, 1809.

A settlement and pre-emption, obtained by Patrick Shoan, had escheated to the commonwealth: from a chain of presumptive evidence, that the persons named in the title had an equitable interest therein, the commonwealth's right was relinquished to them.

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#### CHAPTER LIX.

##### *An ACT to extend the next June Term of the Fayette Circuit Court.*

Approved February 9, 1809.

*BE it enacted by the general assembly*, That the Fayette circuit court, at their next June term, shall continue thirty juridical days, if the business of said court shall render it necessary.

This act shall be in force from its passage.

1808.

## CHAPTER LX.

*An ACT to suspend in part the acts concerning the inspection of Tobacco.*

Approved February 9, 1809.

The section of the act here referred to, will be found in Vol. II, page 155.

*BE it enacted by the general assembly,* That so much of the 23d section of the act entitled "an act to amend and reduce the several acts of assembly for the inspection of tobacco into one act," as requires that tobacco remaining in a public warehouse two years after inspection, should be advertised and sold in the manner directed by said act, and that all act or acts of assembly that requires tobacco remaining in any public warehouse for a limited time after inspection, shall be advertised and sold, be and the same are hereby suspended until the first day of May in the year 1812.

This act shall be in force from its passage.

## CHAPTER LXI.

*An ACT to amend the several acts of assembly concerning the Town of Frankfort, and the act incorporating the Frankfort Water Company.*

Approved February 9, 1809.

Sec. 1. *BE it enacted by the general assembly,* That it shall and may be lawful for the trustees of the town of Frankfort to erect a market-house in the street called Broadway in said town, of such dimensions as to leave a passage in the said street at least twenty-two feet wide on each side of the said market-house, clear of the usual breadth of the footways established by the trustees for the regulation of the town. And the said trustees are hereby authorised and empowered to have the said market-house extended along Broadway street, from and on each side of Saint Clair street, westwardly and eastwardly, as far as from time to time shall be found expedient: *Provided however,* that it shall not be erected so as to obstruct Saint Clair street where it crosses Broadway, or any other street or alley.

Sec. 2. *And be it further enacted,* That hereafter the trustees of Frankfort for the time being shall be the directors of the Frankfort water company, and shall exercise all the powers and be governed by the laws applica-



## XVII. YEAR OF THE COMMONWEALTH.

53.

ble to said corporation ; and so much of the act incorporating the said water company as authorises and directs the election of directors, shall be and the same is hereby repealed.

1808.

This act shall be in force from its passage.

### CHAPTER LXII.

*An ACT to authorise the publication of Advertisements in the Political Theatre and Dove.*

Approved February 9, 1809.

*BE it enacted by the general assembly,* That it shall and may be lawful for any advertisement which is required by law to be published in a newspaper in this commonwealth, to be inserted in the Political Theatre, printed in Lancaster, and also the Dove, printed in the town of Washington, and the editor or editors of said papers shall be entitled to the same fees and be governed by the like regulations as other printers in this commonwealth: *Provided however,* that nothing herein contained shall be so construed as to authorise the insertion in the Political Theatre or Dove, of such advertisements as are particularly required by law to be published in the paper of the public printer,

This act shall be in force from the passage.

### CHAPTER LXIII.

*An ACT authorising the Editor of the Farmers' Friend to insert certain Advertisements.*

Approved February 9, 1809.

*BE it enacted by the general assembly,* That it shall and may be lawful for any advertisements which are required by law to be published in a newspaper, to be inserted in the Farmers' Friend, printed at Russellville ; and the editor or editors of the said paper shall be entitled to the same fees and be governed by the like regulations as other printers in this commonwealth: *Provided,* that nothing herein contained shall be so construed as to authorise the insertion in the Farmers' Friend of such advertisements as are particularly required by law to be published in the paper of the public printer.

This act shall commence and be in force from and after the passage.

1808.

## CHAPTER LXIV.

*An ACT legalizing the proceedings of the County Court of Estill at their April Term 1808, so far as respects the appointment of Commissioners of the Tax.*

Approved February 9, 1809.

## CHAPTER LXV.

*An ACT to amend the act entitled "an act to amend the law concerning the Turnpike and Wilderness Road."*

Approved February 9th, 1809.

Undertaker of Rockcastle bridge allowed further time to complete the same.

Sec. 1. *BE it enacted by the general assembly, That* the further time of eight months from and after the first day of March next, be and is hereby allowed the undertaker of the bridge to be built over Rockcastle river on the Madison road, to finish said bridge. And should the commissioners of the said bridge deem it necessary to make any addition to the plan of said bridge that will create additional labor and expence to the undertaker, they shall have power to do so, and make such an additional allowance to the undertaker as they may deem proper, provided such additional allowance does not exceed one fourth of the sum hereafter appropriated for the purpose of keeping in repair that part of the turnpike road leading from Joe's Lick, in Madison county, to the intersection of the Crab-Orchard road, commonly called the Madison road.

Toll, how appropriated.

Sec. 2. *Be it further enacted, That* from and after the twenty-fourth day of February 1809, one fourth of all the money received by the turnpike keeper for toll, after deducting his salary is hereby appropriated for the purpose alone of keeping in repair the said Madison road, and the finishing and keeping in repair the said bridge, provided the sum requisite to finish and keep in repair the said bridge, does not exceed one third of the sum hereby appropriated: *Provided however,* that should it appear at any time that one third of the sum aforesaid is insufficient to finish and keep in repair the said bridge, and there should be a balance of the remaining two thirds unexpended on the said road, in that case the directors shall apply such balance towards finishing and keeping in repair the said bridge.

Balance due from the former

Sec. 3. *Be it further enacted, That* any balance that may be found due from William Hogan, the former

turnpike keeper, or William Kerley, the former commissioner of the Madison road, upon a settlement with them or either of them, shall be applied towards keeping the said bridge and the Madison road in repair. <sup>1808.</sup> <sup>comm'r. how applied.</sup>

Sec. 4. *Be it further enacted*, That the keeper of the turnpike shall demand and receive in addition to the present toll, for a waggon passing through the turnpike twelve and a half cents for each wheel; and for each four wheel riding carriage and team, one hundred and fifty cents, and for each two wheel riding carriage and team seventy-five cents, in lieu of the toll heretofore paid for such carriages. <sup>Additional toll,</sup>

Sec. 5. *Be it further enacted*, That instead of four directors, as was directed by the law of the last general assembly, to be appointed by the governor, there shall be but three, in each of the counties of Madison, Lincoln and Knox. <sup>Three directors</sup>

Sec. 6. *And be it further enacted*, That John Alsop, sen. shall be allowed thirty dollars as a compensation for his expence and trouble in making the necessary buildings at the turnpike gate, which became necessary on account of the gate being removed to its present place by order of the governor; which sum the said keeper is hereby authorised to retain out of any money in his hands arising from the turnpike. <sup>Allowance to Alsop.</sup>

Sec. 7 *Be it further enacted*, That the turnpike keeper is hereby authorised and directed to pay Anthony Owsley, former commissioner of the wilderness road, the sum of seventy-seven dollars and fifty cents, to be paid quarterly, from and after the first day of May next. <sup>To Owsley:</sup>

This act shall commence and be in force from and after the passage thereof.

## CHAPTER LXVI.

*An ACT to compel the speedy adjustment of Land Claims.*

Approved February 9, 1809.

WHEREAS the prosperity of this commonwealth hath been greatly checked, its improvement and settlement retarded, and its citizens continually alarmed, and often ruined in their fortunes, by reason of the interference of land claims founded or alleged to be founded on the land laws of Virginia or of this state; as claims dormant <sup>Preamble.</sup>

1808:



and utterly unknown to the neighborhood of a disputed tract of land, are often brought up, not only to alarm, but eventually to cast out naked to the world numerous well settled and industrious families; as late and inferior claims to land are held up and concealed until the witnesses to establish the elder and superior title, shall be dead or removed to remote places, or until the property may have fallen into the hands of persons ignorant of the sources of proof respecting it; and as these evils instead of passing away as was once hoped with the lapse of time, are still increasing: for remedy thereof, and to fix the period to which the citizens of this state, and the proprietors of land therein may look forward for peace to themselves, and safety to their property,

Sec. 1. *Be it enacted by the general assembly, That* after the first day of January, in the year one thousand eight hundred and sixteen, no action at law, bill in equity, or other process, shall be commenced or sued out by any person or persons claiming land under or by an adverse interfering entry, survey or patent, whereby to recover the possession from any person or persons, who shall have actually settled thereon, before the passage of this act; and to which he or she so settled at the time of such settlement, had a connected title in law or equity, deducible of record from the commonwealth; and where the settler shall have acquired such title or claim after the time of the settlement made, the limitation shall begin to run only from the time of acquiring such title or claim.

Sec. 2. *And be it further enacted That* no action at law, bill in equity, or other process, shall be commenced or sued out by any person or persons, claiming under or by an adverse interfering entry, survey or patent, whereby to recover the title or possession of such land from him or her, who shall hereafter settle on land, to which he or she shall, at the time of such settlement made, have a connected title in law or equity, deducible of record from the commonwealth; and where the settler shall have acquired such title or claim after the time of the settlement made, the limitation shall begin to run only from the time of acquiring such title or claim, but within seven years next after such settlement made: *Provided, and be it further enacted, that where*

Limitation to  
actions against  
actual settlers.

Limitation to  
actions against  
those who may  
hereafter settle.

Provido.

possession acquired as aforesaid, hath been transmitted by sale or other legal act of conveyance, the purchaser or person holding by such conveyance, shall have the same benefit of this act, as he or she from whom the possession was derived, could have had by virtue of such possession: *And provided also*, that possession as aforesaid, to bar the actions or suits aforesaid, must and shall have been continued for the aforesaid term of six years next preceding the commencement of any such suit or action. And if any one shall proceed contrary to this act, the court before whom such proceedings are had, shall adjudge double costs from the plaintiff or complainant, to the said defendant or defendants.

1808.

And whereas it often happens, that plaintiffs or complainants make false or feigned suggestions to evade statutes: for prevention whereof,

Sec. 3. *Be it enacted*, That no plaintiff or complainant, claiming land as above recited, and instituting his bill or suit after the expiration of the limitation aforesaid, shall under pain of having his bill or suit dismissed with costs, lay, declare or suggest in his bill any other source, ground or cause of suit, than that alone to which the limitation above set forth is meant to extend; and if he have a claim to, or right of action for the land in question, founded otherwise than is mentioned in the first section of this act, the same shall still remain unprejudiced and lawfully pursuable.

False suggestions as cause of action prohibited.

Sec. 4. The limitation prescribed in this act, shall not extend to infants, femmes covert, or persons of unsound mind, nor to persons out of the United States, in the employment of the United States, or this state; but such persons shall be at liberty to institute such suits, as are meant to be limited by this act, at any time within seven years after their respective disabilities are removed, or after the expiration of their employment, beyond the limits of the United States: *Provided however*, that where the limitation shall have began to run, and the right or title shall by the act of God or operation of law, be cast upon any person within the disabilities and exceptions, the time of the existence of such disability or privilege, shall be excepted out of the computation of the time of the limitation aforesaid.

Exceptions to said limitation.

1808.

## CHAPTER LXVII.

*An ACT to amend the act entitled "an act authorising John Pope to erect a Bridge across the Kentucky River."*

Approved February 9, 1809.

## CHAPTER LXVIII.

*An ACT to amend an act passed February 1808, entitled "an act concerning the collection of certain Officers' Fees."*

Approved February 9th, 1809.

The act here referred to will be found in Vol. III, page 485.

*Sec. 1. BE it enacted by the general assembly, That* if any clerk of a court or other officer, within the purview of the act of assembly, passed in February 1808, concerning the collection of certain officers' fees, shall be ignorant of the county of residence of any person or persons indebted to him for fees, and shall verify the same on oath, in the court of the county where the services were rendered, or (if the clerk of a court) in the court of which he is clerk, the same shall without fee, be entered, specifying the fee-bill particularly; and thereupon the same may be noted on each fee-bill respectively—whereupon the right of collection by distress (for non-payment) shall remain attached to such fee-bill, when sent out for collection, as though it had been annually sent out and endorsed agreeably to the provisions of the act aforesaid: *Provided however*, that the oath, entry and noting aforesaid, shall be done within that year in which such fee-bill might first have been sent out for collection.

*Sec. 2. And be it further enacted, That* whenever fees shall be due from and payable by any person or persons residing without the county in which the services shall have been rendered, the fee-bills may be sent out the second year for collection, with right of distress (for non-payment) although they may not have been sent out the first year and endorsed agreeably to the provisions of the said act of assembly: *Provided however*, that nothing in this section contained shall be construed to affect the before mentioned act, so far as it may be applicable to persons residing the whole of the first year

Fees against  
persons whose  
residence is not  
known.

Right of distress  
retained.

Proviso.

Fees against  
persons residing  
out of the county,  
right of distress  
retained.

Proviso.

## XVII. YEAR OF THE COMMONWEALTH.

39

within the county in which the services shall have been rendered.

1808.

Sec. 3. *And be it further enacted*, That whenever fee-bills shall have been duly sent out for collection, and about to be returned as delinquents, it shall be the duty of the returning officer (if such is the truth of the case) to endorse thereon the insolvency of the person or persons against whom the fee-bill had issued, or that he, she or they do not reside within this commonwealth; and in such case it shall not be incumbent on the officer claiming such fees, to send out the fee-bills from year to year, but may send out such fee-bills afterwards at discretion, for collection, with right of distress as in other cases.

Duty of returning officer on delinquent fee-bills.

Right of distress retained.

Sec. 4. And whereas it is represented that the act of assembly aforesaid, passed in February 1808, did not become generally known previous to April in that year, and that sundry clerks had, without knowing the law, failed to comply with its provisions: for remedy whereof, *be it further enacted*, that each clerk and other officer coming within the purview thereof, shall have until the first day of April 1810, to comply with the provisions thereof, and if done within that time, shall place such fee-bills on as favorable a footing as though it had been done within the time prescribed by the said act.

Further time to comply with the law of 1808, as to fees given.

This act shall commence from and after the passage thereof.

### CHAPTER LXIX.

*An ACT for the relief of John Logan's heirs.*

Approved February 9, 1809.

There was a judgment and execution against them, at the suit of the commonwealth. This act permitted the property to be sold on a credit of twelve months.

### CHAPTER LXX.

*An ACT to prevent Attornies at Law of the State of Ohio from practising in Courts in this Commonwealth under certain restrictions.*

Approved February 9, 1809.

*BE it enacted by the general assembly*, That no attorney or counsellor at law of the state of Ohio shall be permitted to practice law in any of the courts of this com-

1808.

monwealth until an act of the legislature of the state of Ohio prohibiting the attornies and counsellors at law of the state of Kentucky practising in the said state of Ohio be repealed: *Provided nevertheless*, that the attornies of the said state of Ohio may finish any suits in which they are now employed in the courts of this commonwealth.

This act shall commence and be in force from and after the passage thereof.

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CHAPTER LXXI.

*An ACT for the relief of Charles Quirey and Samuel Hinch.*

Approved February 9, 1809.

Quiry had been sheriff of Jefferson county and Hinch his deputy: by the sudden death of William Sullivan, another deputy, a delinquent list, amounting to about 100 dollars, for the amount of which Hinch was entitled to a credit, had not been brought forward on a settlement. This act allowed a credit therefor.

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CHAPTER LXXII.

*An ACT altering the times of holding certain Courts in this Commonwealth.*

Approved February 10, 1809.

Knox.

Sec. 1. *BE it enacted by the general assembly*, That hereafter the circuit courts of Knox county shall be held on the first Mondays in April, July and October in every year, and continue six juridical days at each term, if the business thereof require it.

Livingston.

The circuit courts of the county of Livingston shall commence and be held on the first Mondays in April, July and October in every year, and continue six juridical days at each term, if the business thereof require it.

Warren.

The circuit courts for the county of Warren shall commence and be held on the first Mondays in March, June and September in every year.

Barren.

The circuit courts for the county of Barren shall commence and be held on the third Mondays in March, June and September in every year, and continue twelve juridical days at each term, if the business thereof require it.

Pulaski.

The circuit court of Pulaski county, at their next April and July terms, shall continue to sit twelve juridical days at each, if the business thereof require it.



## XVII. YEAR OF THE COMMONWEALTH.

61

The circuit courts for the county of Pendleton shall commence and be held on the third Mondays in April, July and October in each year, and shall continue six juridical days at each term, if the business thereof require it. 1808.

The circuit courts for the county of Casey shall commence and be held on the second Mondays in May, August and November in every year, and shall continue six juridical days at each term, if the business thereof require it. Casey.

The circuit court for the county of Woodford shall commence and be held on the first Mondays in March, June and September in every year, and continue to sit twelve juridical days at each term, if the business thereof require it. Woodford.

The circuit court for the county of Henry shall commence and be held on the first Monday in March in every year, and sit six juridical days, if the business thereof require it. Henry.

The circuit court for the county of Gallatin shall commence and be held on the second Monday in April, instead of the second Monday in March, in every year, and sit six juridical days, if the business thereof require it. Gallatin.

The circuit courts for the county of Scott shall commence and be held on the first Mondays in April, July and October in every year, and shall continue twelve juridical days at each term, if the business thereof require it. Scott.

The circuit courts for the county of Campbell shall commence and be held on the fourth Mondays in April, July and October in every year, and shall continue six juridical days at each term, if the business thereof require it. Campbell.

The circuit courts for the county of Boone shall commence and be held on the first Mondays in May, August and November in every year, and shall continue six juridical days at each term, if the business thereof require it. Boone.

Sec. 2. *Be it enacted*, That all writs, recognizances, and every process which are or shall be sued out before the first term of the said courts respectively, as directed by this act, and made returnable to the terms of the said courts as heretofore by law directed to be held, shall be Regulations respecting the return of process.

1808. returnable and returned to the first terms of the said courts respectively, as directed by this act to be held, and there shall be no discontinuance of any suit, writ, process or motion depending or to be made or issued in the said courts or either of them, by reason of the alteration made by this act in the terms of holding said courts.

County courts, when held. Sec. 3. *Be it further enacted*, That the county courts of the said counties shall, after the first day of March next, be held on the same Mondays in every month in the year, in which the circuit courts are therein respectively directed by this act to be held, except the months in which the circuit courts are holden.

Garrard. Sec. 4. The county court of Garrard county shall hereafter be held on the second Mondays in each month in every year, except the months in which the circuit courts for said county are held.

Green. The circuit court for the county of Green shall commence on the fourth Mondays in February, May and November in every year, and sit six juridical days at their February, and twelve days at their May and November terms, if the business thereof require it.

Nelson. Sec. 5. *Be it further enacted*, That the circuit court for the Nelson circuit shall, from and after the passage of this act, sit twenty-four juridical days at each term, if the business before the court shall require it; and that the last six days in each term shall be appropriated to the trial of chancery suits alone.

Livingston. Sec. 6. *Be it further enacted*, That the county of Livingston shall be added to and constituted a part of the sixth juridical district, and the circuit courts for said county shall commence on the fourth Mondays in March, June and September.

Muhlenburg. The circuit courts for the county of Muhlenburgh, shall commence on the second Monday in March, June and September.

Hopkins. And the circuit courts for the county of Hopkins, shall commence on the third Monday in March, June and September.

Caldwell. Sec. 7. *And be it further enacted*, That the county of Caldwell shall be added to and constitute a part of the seventh juridical district, and the circuit courts for said county shall commence on the first Monday in April, July and October, and continue one week each, if

XVII. YEAR OF THE COMMONWEALTH.

63

the business before them require it. And the county courts for said county shall commence on the same day in every month, except in those months, in which the circuit courts are directed by this act to be held. 1808.

All acts and parts of acts coming within the purview of this act, shall be, and the same are hereby repealed.

The circuit court for the county of Greenup shall be held on the third Monday in October, instead of the third Monday in November, and shall sit six juridical days. Greenup.

The circuit court for the county of Lewis shall be held on the fourth Monday in October, instead of the fourth Monday in November, and shall sit six juridical days. Lewis.

The circuit court of Mason shall sit the second Monday in August and November, instead of the second Monday in September and December, and shall continue eighteen juridical days each, if the business thereof require it. Mason.

This act shall commence and be in force from and after the passage thereof.

CHAPTER LXXIII.

*An ACT supplementary to the act entitled "an act to repeal the provisionary clause of the act establishing the County of Harrison."*

Approved February 9, 1809.

WHEREAS further regulations and provisions are necessary to carry the act, entitled "an act to repeal the provisionary clause of the act establishing the county of Harrison," into full and complete operation,

*Be it therefore enacted,* That it shall be lawful for the sheriff of Bourbon county to collect or make distress for any public dues and officers' fees, which shall remain unpaid by the inhabitants of that part of Bourbon county which will by the aforesaid act be added to the county of Harrison, to wit: all that territory included in the lines and bounds as designated in the act for dividing the county of Bourbon, approved December 21st, 1793, without regard to the provisionary clause in said act, all which is hereby added to the county of Harrison; and shall be accountable for the same in like manner as if the aforesaid act had not been made. And that the

1808. courts of the said county of Bourbon shall have jurisdiction in all actions and suits in law or equity, which shall be depending before them at the time the aforesaid act passed, and shall try and determine the same, issue process and award execution.

This act shall be in force from its passage.

#### CHAPTER LXXIV.

*An ACT to amend the act, entitled "an act for the procurement of a Fire Engine."*

Approved February 9, 1809.

This act requested the Governor for the time being to procure one.

#### CHAPTER LXXV.

*An ACT concerning the Secretary and his Office.*

Approved February 11, 1809.

To procure a  
fact. Sec. 1. *BE it enacted by the general assembly,* That the secretary of state be and he is hereby authorised to procure for the use of his office one large additional press, for the purpose of containing the books and papers of said office, also one box to hold the enrolled bills or laws of this state, also a writing table with convenient seats, and to have the machine for making and impressing the state seal so constructed as to be convenient for that purpose. And for the securing of the said office Office to be se-  
cured from fire, and how. from fire, he is hereby authorised and directed to have the floor thereof, around and contiguous to the fire place, at a convenient distance therefrom, covered with tin or sheet iron, and to procure a proper fender and a pair of andirons for the use of the office, all of which to be done under his direction.

Secretary to ex-  
change copies  
of laws. Sec. 2. *And be it further enacted,* That it shall be the duty of the secretary to interchange with any state or territory of the United States, which may have transmitted or may hereafter agree to do so, copies of the laws of this state, for copies of their laws, in equal proportions to those laws of theirs which may be received; and where the laws received by him shall be bound, to cause those which he may transmit in exchange to be bound in like manner.

Further provi-  
sion respecting  
laws. Sec. 3. *And be it further enacted,* That copies of any of the printed laws of any state or territory of the Uni-

# XVII. YEAR OF THE COMMONWEALTH.

65

ted States, which may have been heretofore or may hereafter be received in the secretary's office, and which shall have been printed under the authority of such state or territory, when duly certified under the hand and seal of the secretary of state, shall be admitted and received as evidence of such law in like manner with said printed copy in any of the courts or before any juridical officer of this commonwealth.

1808.

Sec. 4. *Be it further enacted*, That it shall be the duty of the secretary to cause one complete set of the laws of this state and of the United States, to be bound in good law binding and lettered; and one complete set of the journals of both houses of the legislature and of the congress of the United States, and such of the laws of the several states or territories which have been or may hereafter be received, to be half bound and lettered: and to continue to cause the same to be so done hereafter as occasion may require: and that he shall procure if practicable such of any of the laws or journals of this state as are not in his office: *Provided however*, nothing herein shall be construed to extend to direct or authorise the secretary to cause any copies of any of the laws or journals aforesaid to be bound, where the same shall be already bound and in his office. And when any secretary shall go out of office, he shall deliver to his successor a list of the bound books remaining in the said office at the time, and shall take his receipt for the same, a copy of which list and receipt shall be recorded in the clerk's office of the court of appeals, and the secretary for the time being, shall be responsible for the said books, accidents excepted.

Laws of this state and U. S. to be bound.

Further duty of secretary.

Provido.

Secretary who goes out of office, his duty.

Sec. 5. *And be it further enacted*, That for the necessary sums for procuring the said press, table, &c. and for the procuring and binding the books, &c. an account thereof shall be submitted to the governor, and if he approve of the same, he shall certify to the auditor, who is hereby directed thereon to issue his warrant upon the treasury for the sum or sums so certified, and the treasurer is directed to pay the same.

Press, table, &c. how to be paid for.

This act shall be in force from and after the passage thereof.

VOL. IV.

K

1808.

## CHAPTER LXXVI.

*An ACT authorising the Justices of certain County Courts and Trustees of Academies to appropriate Lands for the use of Seminaries of Learning.*

Approved February 11, 1809.

Sec. 1. *BE it enacted by the general assembly*, That the justices of the county courts of Caldwell, Hopkins, Henderson and Estill, are hereby authorised to procure to be located, surveyed and patented, six thousand acres of any vacant and unappropriated land in the commonwealth, for the use of seminaries of learning within their respective counties; except the lands to which the Indian title is extinguished by the treaty of Tellico, and the lands lying west of the dividing ridge between the waters of Cumberland and Tennessee.

Sec. 2. *Be it further enacted*, That the justices of such county courts and trustees of academies as have located a part of their donation lands, are hereby authorised to procure to be located, surveyed and patented so much of the lands aforesaid, in addition to the quantity already located, as will make in the whole six thousand acres: *Provided however*, that the justices of the several county courts and trustees aforesaid, shall be regulated by the laws now in force, granting donation lands to other counties in this commonwealth.

Sec. 3. *Be it further enacted*, That the justices aforesaid and those of such county courts and trustees of academies as have not located and surveyed their donation lands, shall have two years from the passage of this act for that purpose: *Provided however*, that nothing contained in this or any other act, shall be so construed as to authorise the locating and surveying of more than six thousand acres of land for any one county herein named.

This act shall be in force from the passage thereof.

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CHAPTER LXXVII.

*An ACT concerning the Treasurer's and Auditor's Offices.*

Approved February 11, 1809.

*BE it enacted by the general assembly*, That every person who may have obtained or hereafter obtain a certificate from the court, on account of their having paid

## XVII. YEAR OF THE COMMONWEALTH.

67

money into the treasury for lands lost by virtue of military claims, &c. as is provided in the first section of the act passed the twenty-first of December 1802, entitled "an act for the relief of settlers in this commonwealth in certain cases," instead of producing such certificate to the treasurer, shall take it to the auditor, who shall issue his warrant on the treasurer for the sum the applicant may be entitled to, which shall be discharged by way of credit, as is directed by the before recited act.

This act shall be in force from its passage.

1808.

### CHAPTER LXXVIII.

*An ACT repealing all laws establishing Examining Courts in this Commonwealth.*

Approved February 11, 1809.

The section here repealed will be found in Vol. III, page 41.

Sec. 1. *BE it enacted by the general assembly, That* the thirteenth section of the act entitled "an act to establish circuit courts," and so much of all other acts or parts of acts, as requires a court of examination in the case of a free person charged with a criminal offence, shall be and are hereby repealed.

Repealing clause.

Sec. 2. *Be it further enacted, That* when any free person shall be brought before a justice of the peace, upon a criminal charge, the punishment of which, if true, may be capital, or confinement in the penitentiary house, or corporeal, it shall be his duty to go with the parties to some other justice of the peace of the same county, which two justices shall inquire into the truth thereof; and if they shall be of opinion that the accused ought to be tried before the circuit court, the said justices shall, by a warrant under their hands, commit the person so charged to the jail of his county, if the offence be not bailable, or being bailable, if the accused fail or refuse to give bail, there to remain until the first day of the next circuit court, or until he, she or they shall give bail, in a penalty previously fixed by said justices, or until he or she be discharged by due course of law. But if the offence be bailable, and the accused pray to be admitted to bail, and offer one or more sufficient bail, the said justices shall take the recognizances accordingly, for the appearance of the accused before the circuit court, and on the first day of the next succeeding term. And the said

Duty of justices

The accused may be admitted to bail.

1808. justices shall also recognize the witnesses who appeared before them in support of the charge, to appear before the circuit court on the first day of their next succeeding term: *Provided however*, that nothing herein contained shall be so construed as to prevent a justice of the peace residing out of the county where the crime may have been committed, and before whom the accused shall be brought, from proceeding to deal with the person so accused according to the law now in force.

Justice to take down in writing statement of evidence. Sec. 3. *Be it further enacted*, That to aid the commonwealth's attorney to form a bill of indictment, it shall be the duty of the justices before whom a person shall be accused as aforesaid, and who shall be of opinion that he ought to be sent to further trial, to take down in writing a concise statement of the evidence produced in support of the charge, setting forth the nature, time, place and manner of perpetrating the crime, or as many of these circumstances as they shall be enabled to do. And they are hereby required and directed to deliver the recognizances, &c. to be delivered to clerk, aforesaid of the accused, bail and witnesses, and the said statement of evidence, to the clerk of the circuit court, within ten days after the prisoner may be committed or bailed by them, unless the circuit court should sooner intervene, and in that case they shall deliver them to the clerk before the first day of the term of the said court.

Clerk to deliver to attorney the statement of evidence. Sec. 4. *Be it further enacted*, That it shall be the duty of the clerk of the said circuit court to deliver to the attorney for the commonwealth the said statement of evidence, upon which he shall prepare and lay before the grand jury the necessary presentment or indictment, as heretofore. And the said clerk of the circuit court, upon the receipt of the said recognizances or statement of the evidence aforesaid, shall issue a *venire facias*, directed to the sheriff of the county, unless he be the accused, or otherwise disqualified, and in that case to the coroner, commanding him to summon twelve good and lawful men of the vicinage, to attend in such case as a *venire* before the circuit court on the first day of the term. And the officer executing the said writ, shall also make out and return a pannel of the jurors as heretofore.

Where the sheriff or coroner is Sec. 5. *Be it further enacted*, That where the sheriff and coroner shall be both implicated in the criminal



charge, or otherwise disqualified to act, or one only being implicated, the other shall be related to him, it shall be the duty of the circuit court before whom the accused is to be tried to appoint some impartial person to summon a *venire*, to whom the writ of *venire facias* shall be accordingly directed, and who shall be governed by the same laws, rules and regulations, as in such cases apply to the sheriff or coroner: *Provided however*, that the trial shall not be postponed beyond the term at which such order is made, in consequence of such appointment by the court.

1808.

implicated, the court to appoint a proper person.

Proviso.

Sec. 6. *Be it further enacted*, That the justices, in taking bail of the accused shall in substance pursue the following form, viz. " \_\_\_\_\_ County, to wit: Be it remembered, that A B, C D, and E F, this day personally appeared before us \_\_\_\_\_ and \_\_\_\_\_, justices of the peace for said county, and severally acknowledged themselves indebted to the commonwealth of Kentucky in the sum of \_\_\_\_\_ dollars, that is to say, the said A B in the sum of \_\_\_\_\_ dollars, and the said C D and E F in the sum of \_\_\_\_\_ dollars each, to be levied of their respective lands and tenements, goods and chattels; but to be void on the said A B's personally appearing in the circuit court for the county aforesaid, on the first day of their next term, and surrender himself in custody, to answer to the commonwealth for a felony (treason or murder, as the case may be) with which the said A B stands charged before us. Acknowledged before us this \_\_\_\_\_ day of \_\_\_\_\_." *Provided however*, that nothing in this act contained shall be so construed as to render void any recognizance which would be valid in law if this section had not passed.

Form of recognizance.

Proviso.

Sec. 7. *And be it further enacted*, That trials of a kind heretofore cognizable in courts of oyer and terminer for the trial of slaves, shall be cognizable in the county courts at their usual and respective county court terms, and shall be regulated by the laws heretofore applicable to the said courts of oyer and terminer, so far as they shall apply.

Trial of slaves where cognizable.

Sec. 8. *And be it further enacted*, That any person prosecuted for felony, shall not be permitted to take advantage of any error or irregularity therein, before the indictment, unless the same is of substance, nor in that case unless the party so prosecuted shall appear in person in the circuit court having cognizance of the offence.

No advantage to be taken of irregularity before indictment.

1808.

Sec. 9. All acts contravening the provisions of this act, shall be and the same are hereby repealed.

This act shall be in force from and after the first day of May next.

### CHAPTER LXXIX.

#### *An ACT for the relief of Joseph Hart.*

Approved February 11, 1809.

As assignee of Abraham Buford, he was entitled to 3000 acres of land ; the register not thinking that under the circumstances of the case he was authorized to receive the plats and certificates of survey, this act authorized him so to do.

### CHAPTER LXXX.

#### *An ACT to coerce the payment of arrearages from the several delinquent collectors of public dues.*

Approved February 11, 1809.

*BE it enacted by the general assembly, That any suit at common law or in chancery, brought against a public debtor or his security or securities, his, her or their representatives or any other claiming under them, for the purpose of setting aside a conveyance of property, for discovery or otherwise, for the purpose of enabling the commonwealth to obtain satisfaction of a judgment obtained against a public debtor, his security or securities, or their representatives, or either of them, may be brought in the general court or in the circuit court of the county in which any land which may be the subject of controversy may be, or in which the defendant or defendants or either of them may live or be found ; it shall be lawful for the auditor for the time being, and it is hereby made his duty to cause such suits to be brought whenever he shall be of opinion the commonwealth will be benefited thereby. And for the purpose of prosecuting such suit or suits with effect, he is hereby authorised and empowered to employ one or more attorney or attorneys to attend to and prosecute such suit or suits, and one or more agent or agents to transact all or any business relating thereto out of court, and to agree by a written contract with such attorney or attorneys, agent or agents, for a certain compensation to be paid out of the public treasury, when the business which he or they have undertaken be completed ; or for a sum to be*

Suits against public debtors, &c. where they may be brought

Auditor's duty.

May employ attorneys & agents

Their compensation.

paid in case of success, or for a per cent. on the money actually collected by virtue of such suit or suits: *Provided however*, such conditional compensation so agreed to be paid to the attorney or attornies, and agent or agents, in one cause shall not exceed the sum of twenty per cent. on the first three hundred dollars, and ten per cent. on the residue of the money actually collected by virtue of such suit: *Provided also*, that nothing in this act shall authorise the attorney-general to receive any other compensation for any suit he may prosecute on behalf of the commonwealth, than is now allowed by law. Nothing in this act contained shall authorise any agent or attorney employed by the auditor to receive the money collected on behalf of the commonwealth, but the same shall be paid into the treasury by the officer who may collect it, as heretofore directed by law. When any agent or attorney employed by the auditor, in pursuance of this act, hath performed the services stipulated by him to be performed, the auditor shall issue his warrant on the treasury for the sum such agent or attorney shall be entitled to, which shall be paid by the treasurer.

1808.

Money to be paid into the treasury.

Warrant to issue in favor of attorney or agent.

This act shall be in force from its passage.

#### CHAPTER LXXXI.

*An ACT for the benefit of certain Militia Men of the 55th Regiment.*

Approved February 11, 1809.

They had been ordered out to guard the frontiers of Livingston county against the invasion of Indians, in the year 1808. This act gave them compensation for that service.

#### CHAPTER LXXXII.

*An ACT to prevent the fraudulent appropriation of Lands under color of Treasury Warrants.*

Approved February 11, 1809.

Sec. 1. *BE it enacted by the general assembly*, That it shall not be lawful for the register of the land-office to receive or register or issue a patent on any plat and certificate of survey, purporting to be made on a Virginia land-office treasury warrant or warrants, or by virtue of any entry made with a surveyor of any county within

Register not to issue patents on Virginia land-office treasury warrants without a certificate from the surveyor.

1808.

our limits, while it was part of the state of Virginia, unless the principal surveyor, certifying such plat and certificate of survey, shall have also endorsed and certified thereon, that the same was made on an entry for land lying within the bounds of his county, (or at least the greater part thereof) nor shall it be lawful for the register to issue a patent on any plat and certificate of survey, of the description aforesaid, already registered, until a certificate of the principal surveyor, in substance as aforesaid, shall be obtained and filed with the register.

Nor to issue patents on military reserved lands nor for lands in counties where they lie without certificate from the surveyor.

Sec. 2. *And be it further enacted*, That a plat and certificate of survey purporting to be on a Virginia land office treasury warrant or warrants, within the counties of Green, Lincoln, Pulaski, or Knox, (or any other county through which passeth the line which divideth the military reserved lands from the land subject to treasury warrant entries, or in any county in which any land commonly called the military reserved land may lie) shall be received or registered or a patent issued thereon, unless the principal surveyor certifying the survey shall also have endorsed and certified thereon that the land included in the survey or any part thereof is not within the bounds set apart by the state of Virginia for officers and soldiers, (commonly called the military reserved lands) nor shall it be lawful for the register to issue a patent on any plat and certificate of survey already registered of the description (in this section) aforesaid within the counties aforesaid, until a certificate of the principal surveyor in substance as (in this section) aforesaid, shall be obtained and filed with the register.

Nor for such lands already registered without such certificate.

Patents not to issue for lands acquired by the treaty of Tellico without certificate from the surveyor.

Sec. 3. *And be it further enacted*, That no plat and certificate of survey purporting to be on a Virginia land office treasury warrant, within the counties of Knox or Pulaski (or any other county through which passeth the boundary line of the lands acquired by the treaty of Tellico) shall be received or registered, or a patent issued thereon, unless the principal surveyor certifying the same, shall also have endorsed and certified thereon, that the land included in such survey or any part thereof is not within the bounds of the land acquired by the treaty of Tellico; nor shall it be lawful for the register to issue a patent on any plat and certificate of survey already registered, of the description in this section

Nor for such lands already registered without such certificate.

aforesaid, within the counties aforesaid, until a certificate of the principal surveyor, in substance as (in this section) aforesaid, shall be obtained and filed with the register.

1808.

Sec. 4. *And be it further enacted*, That if any patent shall hereafter be issued contrary to the true intent and meaning of this act, such patent shall be illegal and void and the lands included therein shall be subject to appropriation as other vacant lands of the commonwealth, and all and every person or persons who shall procure the issuing of such illegal patent, or shall attempt to procure a patent to be issued contrary to the true intent and meaning of this act, shall be guilty of a misdemeanor, for which he, she or they may be indicted and fined and imprisoned at the discretion of a jury.

Patents declared void.

Penalty on persons procuring the same.

Sec. 5. *And be it further enacted*, That if any register of the land office shall violate the provisions of this act, or if any surveyor shall certify untruly and contrary to the true intent and meaning of this act, or shall make any survey of the illegal kind herein before mentioned, it shall be deemed a misdemeanor and malfeasance in office, and shall subject such offending officer to indictment and imprisonment, at the discretion of a jury, not exceeding one year, and to a fine equal to twice the value of the land contained in such illegal survey or patent: *Provided however*, that nothing in this act contained shall be construed to make good and lawful any survey or patent which would not have been valid in law if this act had not been passed.

Penalty on the register and surveyor.

This act shall be in force from its passage.

#### CHAPTER LXXXIII.

*An ACT to repeal the tenth section of the act entitled "an act to amend the several acts concerning the Town of Frankfort."*

Approved February 11, 1809.

*BE it enacted by the general assembly*, That the tenth section of the act entitled "an act to amend the several acts concerning the town of Frankfort," approved the 16th December 1802, be and is hereby repealed.

This act to be in force from its passage.

VOL. IV.

L

## DECEMBER SESSION,

1808.

## CHAPTER LXXXIV.

*An ACT to amend the act incorporating the Madison Hemp-Mill Company.*

Approved February 11, 1809.

WHEREAS it is represented to the present general assembly, that the prohibition from issuing notes, and paying any but cash for materials, contained in the 10th section of the act entitled "an act to incorporate the Madison hemp-mill company," has been injurious to the said corporation: therefore,

Sec. 1. *Be it enacted by the general assembly,* That the said prohibitory parts of the said tenth section shall be and the same are hereby repealed; and that the said company be permitted to borrow from any bank, individual or company, such sum or sums as may be necessary to carry the objects of said company into complete effect: *Provided,* that nothing in this act shall be extended or construed to give to the said hemp-mill company the right or power to discount notes, or to make or issue any note, or bond payable to bearer, or any note commonly called a post note, or any note or bond whatsoever, for the payment of money, which shall not bind the said company directly to pay the amount to some person by name, who may transfer the same by written assignment, as in other cases between individual and individual.

Sec. 2. *And be it further enacted,* That the said company shall not be prevented from purchasing and manufacturing wool, in addition to the articles enumerated in the before recited act.

This act shall commence and be in force from its passage.

## CHAPTER LXXXV.

*An ACT providing for the recovery of Monies fraudulently drawn from the Treasury.*

Approved February 11, 1809.

WHEREAS it is represented to the present general assembly, that numerous base frauds have been practised on the public treasury by John Kerchevall, James S. Megowan and others, who have drawn large sums of money therefrom, under color of an act of assembly passed in the year 1800, entitled "an act for the relief of sundry citizens of Mason county and others," and an act entitled "an act to amend an act for the relief of the ci-

tizens of Mason and others," passed in 1801: for the recovery of which, 1808.

Sec. 1. *Be it enacted by the general assembly,* That it shall be the duty of the commonwealth's attornies in the circuit courts of Mason and Montgomery, to institute in their respective circuits, in the name of the commonwealth, any action or actions at law or in equity, at their election, against the said James S. Megowan and John Kerchevall, separately, and prosecute the same to a judgment, agreeably to the rules prescribed by law in other cases; and upon judgment or decree rendered against the defendant, it shall be their duty to direct executions to issue; and the sheriffs of said counties and circuits shall proceed to collect the money as in other cases and under the same penalties. Suits to be instituted against John Kerchevall and James S. Megowan.

Sec. 2. *Be it further enacted,* That the said attorney for the circuit of Mason may, if he elects to bring a suit at law, direct the said John Kerchevall to be held to appearance bail in the sum of three thousand dollars; and the said attorney for the circuit of Montgomery, if he elects to bring an action at law, may also direct the said James S. Megowan to be held to appearance bail in the sum of twelve hundred dollars, and the sheriffs shall proceed therein as in other cases wherein bail is required. Duty of commonwealth's attorney in Mason and Montgomery.

Sec. 3. *Be it further enacted,* That it shall be the duty of the clerks of the circuit courts in the aforesaid counties to issue all original, mesne, or final process on the part of the commonwealth; and the sheriff of the several counties in this state shall execute the same without any fee or other compensation, unless the money shall be collected from the defendant in the suit, in which case they shall collect and receive the usual fees. And the said attornies shall, as a compensation for the services required of them by this act, receive twenty-five per cent. upon the several sums recovered and collected; and so soon as the executions which may be issued shall be returned satisfied, the clerks of the aforesaid courts shall certify the same to the auditor of public accounts, and the sheriffs who shall have collected the money shall, under the penalty of double the amount collected, within ninety days after the return aforesaid, settle with the auditor and pay into the treasury all sums by them collected, except the aforesaid twenty-five per cent. which they shall reserve and pay to said attornies, and for which the auditor shall give him or them credit. Clerk's duty. Sheriff's duty. Attornies compensation. Penalty on the sheriff in case of non payment of money collected.

1808.  
 {  
 Lien of com-  
 monwealth.

Sec. 4. *Be it further enacted*, That from and after the passage of this act, the commonwealth shall have a lien upon the goods and estate of the said John Kerchevall and James S. Megowan, for all sums which may be due from them to the state; and all transfers or conveyances made by them of personal or real estate, shall be held, deemed and taken as fraudulent and utterly null and void.

Sec. 5. *Be it further enacted*, That it shall be the duty of the clerks of the aforesaid circuits to issue original process, without claiming any tax therefor; and in case the said John Kerchevall or James S. Megowan shall have removed to any other county within this state, it shall be the duty of said attornies to issue an *alias* to the county to which he or they may have removed, or proceed by attachment against their estate, at his election, in which case the same proceedings shall be pursued as is by law prescribed in other cases.

This act shall be in force from and after the passage thereof.

#### CHAPTER LXXXVI.

*An ACT to amend the act entitled "an act for the further regulation of the Penitentiary House."*

Approved February 11, 1809.

Agent may con-  
 tract with a su-  
 percargo.  
 Sec. 1. *BE it enacted by the general assembly*, That the agent of the penitentiary house be, and he is hereby authorised and empowered, to contract with any supercargo or shipper to take on freight any and all of the articles manufactured by the convicts from stone materials to any place or places on the Ohio or Mississippi, for market, there to be sold for the best prices that can be had for them.

Agent's duty  
 previous there-  
 to.  
 Sec. 2. *Be it further enacted*, That previous to such transportation, the agent shall make regular and faithful entries of each article at its real value in the penitentiary in his book, and also the costs of freightage, so that the whole expence shall appear; and the agent in adjusting the accounts with the penitentiary shall charge the commonwealth only with the value and costs aforesaid.

To take bond  
 and security,  
 Sec. 3. *Be it further enacted*, That the agent aforesaid shall take bond and sufficient security from the super-



cargo so employed, in a penalty of twice the value of the cargo under his care, conditioned for the faithful discharge of his duty in taking care of the cargo, selling the same, receiving and paying over to him the money arising therefrom within six months thereafter, retaining the costs of freightage only to himself.

1808.

Sec. 4. *And be it further enacted*, That it shall be the duty of the agent to pay the nett proceeds arising from the cargo into the public treasury, first delivering to the auditor of public accounts a certified statement of the amount.

To pay the proceeds into the treasury.

Sec. 5. *And be it further enacted*, That no money shall be drawn from the public treasury for the purposes contained in this act.

No money to be drawn therefrom for the foregoing purposes.

Sec. 6. *And be it further enacted*, That the agent of the penitentiary shall, in his annual report to the general assembly, state the amount annually, that the keeper receives on the ten per cent. allowed him on all work done in the penitentiary by the convicts.

Agent's duty in his annual report.

Sec. 7 *Be it further enacted*, That if the supercargo so employed shall not be able to make sale of all the articles within a reasonable time, and may not wish to be detained, he may put such articles of the cargo as remain unsold, into the hands of a proper person to sell on such commission as he shall think just, and shall take from such person a receipt, shewing the quantity and species of such articles, and the estimated value of each article, with a promise to account for and pay to the agent of the penitentiary, or to his order, the amount of sales of such articles (after deducting his commission) as soon as they may be sold, and he shall deliver such receipt to the agent of the penitentiary.

Supercargo may appoint a person to sell on commission.

His duty.

This act to be in force from its passage.

## CHAPTER LXXXVII.

### *An ACT imposing Fines in certain cases.*

Approved February 11, 1809.

Sec. 1. *BE it enacted by the general assembly*, That whosoever shall, by offering money, by persuasion or otherwise, prevail on, or shall accept any free person under the age of twenty-one years, or shall prevail on, or accept any servant or slave to be the rider in a race, if the minor, servant or slave so prevailed on or accepted,

1808. shall actually commence riding the race without the consent of the father, if living, and if dead, the mother or guardian of such minor, or of the master of such servant or slave first had in writing, shall be deemed guilty of a misdemeanor; and for every such misdemeanor shall forfeit and pay to such father, mother, guardian or master, as the case may be, the sum of one hundred dollars, to be recovered in an action of debt in any circuit court within whose jurisdiction the offence shall have been committed: and the minor or servant, being a free person, so prevailed on or accepted, and riding as aforesaid, may be a competent witness for the plaintiff in such action: *Provided*, that the father, master, or guardian, as the case may be, may moreover bring an action of trespass on the case, to recover any damages which he or they may have sustained by such injury.

This act shall be in force from and after its passage.

#### CHAPTER LXXXVIII.

*An ACT to amend the Penal Laws of this Commonwealth.*

Approved February 11, 1809.

Sec. 1. *Be it enacted by the general assembly*, That every person convicted of wilfully and fraudulently removing or defacing any corner tree to any survey in this commonwealth, or as accessory thereto before the fact, shall be deemed guilty of felony, and subject to confinement in the penitentiary, under the same rules and regulations as other convicts, for a period not less than four nor more than eight years.

Sec. 2. *Be it further enacted*, That every person convicted of horse stealing or accessory thereto before the fact, shall undergo a confinement in the penitentiary, subject to the same rules and regulations as aforesaid, for a period not less than four years nor more than eight years.

Sec. 3. *Be it further enacted*, That so much of all laws coming within the purview of the second section of this act is hereby repealed.

Sec. 4. *Be it further enacted*, Whenever any person may be charged of wilfully and maliciously stabbing, shooting or otherwise wounding any person, and death may not have ensued in consequence thereof, it shall be lawful for some justice of the peace for the common-

Removing or  
defacing corner  
trees.

Accessory.

Penalty.

Horse stealing.

Penalty.

Laws repealed.

Stabbing, shoot-  
ing or wounding

Form of proce-  
dure.

XVII. YEAR OF THE COMMONWEALTH.

79

wealth to issue his warrant to apprehend such person, and either commit him or her to the jail of the county where such offence may be committed, or recognize the offender with sufficient bail to appear at the next circuit court for such county.

1808.

Sec. 5. *Be it further enacted*, That the court upon the appearance of the offender, and in case the person stabbed, shot or wounded may not have died, shall recognize the offender with sufficient bail to appear at the next circuit court, and in default of such bail being given, commit such offender to the jail of the county; and upon the appearance of the offender at the next succeeding court after the term to which such offender may be recognized by the justice as aforesaid, and in case twelve months should not have elapsed from the time the offence was committed, the court shall again recognize such offender with sufficient bail to appear at the next succeeding court for said circuit: *Provided however*, it should appear to the satisfaction of the court to which such offender may be recognized at any time, that the person stabbed, shot or wounded as aforesaid has recovered, or that the wound is not mortal, such offender may be indicted and tried at any time for wilfully and maliciously stabbing, shooting or wounding as the case may be.

Sec. 6. *Be it further enacted*, That an indictment shall be preferred against such offender at the first circuit court succeeding twelve months from the time such offence was committed, and in case the person stabbed, shot or wounded as aforesaid, should die within the term of twelve months aforesaid, an indictment shall be preferred against such offender for murder; but should death not have ensued within the period aforesaid, an indictment shall be preferred for stabbing, shooting or wounding, and the offender shall be tried for such stabbing, shooting or wounding, and not for murder, although death may afterwards ensue.

Sec. 7. *Be it further enacted*, That in case of the offender failing to appear agreeable to any recognizance taken under this act, such process shall issue subject to the same rules and regulations as are to be observed in other criminal cases.

Sec. 8. *Be it further enacted*, That hereafter in all criminal cases recognizances shall be taken to and in the name of the commonwealth of Kentucky, and all process

Recognizances,  
how taken in all  
criminal cases,

1808.

which may issue upon such recognizance shall pursue the same as taken and conclude against the peace and dignity of the commonwealth of Kentucky, and judgment shall be rendered and execution issue thereon in the name of the commonwealth of Kentucky.

Criminals convicted under the laws of the U. S. may be imprisoned in the penitentiary.

Sec. 9. *Be it further enacted*, That whenever judgment may be pronounced against any offender in this commonwealth, under the laws of the United States, subjecting such offender to imprisonment or confinement in the penitentiary, that the keeper of the penitentiary shall and is hereby directed to receive and receipt for such offender, subject to the same rules and regulations as other convicts under the laws of this commonwealth.

Second offence, how punished.

Sec. 10. *Be it further enacted*, That every person convicted a second time for an offence of the same grade of that which such offender may first have been convicted of, shall undergo a confinement in the penitentiary house for a period double the time for which such offender was first convicted.

Common law revived.

Sec. 11. *Be it further enacted*, That the common law in relation to riots, routs, unlawful assemblies of the people, assaults, batteries, affrays and breaches of the peace shall be and the same is hereby revived and declared to be in full force, and that any person or persons guilty of any of the aforesaid offences may be indicted and punished at common law as heretofore, any law to the contrary notwithstanding: *Provided*, that this act shall not be so construed as to subject any person or persons to be twice punished for the same offence.

This act to be in force from the first day of March next.

#### CHAPTER LXXXIX.

*An ACT to authorise the appointment of a Sergeant to the Court of Appeals, and allowing appeals in certain cases of Caveat.*

Approved February 11, 1809.

Caveats may issue in certain cases.

Sec. 1. *BE it enacted by the general assembly*, That on all claims to land accruing under any act or acts of assembly which have been passed by the commonwealth of Kentucky, authorising the appropriation of any vacant land, caveats may be filed and prosecuted in the same manner and under the same rules and regulations

as are prescribed in an act entitled "an act to reduce into one the several acts for preventing vexatious suits, and regulating proceedings in civil cases," except that the caveat shall be prosecuted in the circuit court of the county where the land lies, and that from any judgment rendered by any circuit court on any caveat filed and prosecuted under this act, either party may appeal to the court of appeals on giving bond with security, and otherwise proceedings as in other cases of appeal. Nothing in this act contained shall be construed in any wise to alter or change the law respecting caveats prosecuted under rights derived from the laws of Virginia, but the same shall remain as if this act had never passed, nor shall any thing herein contained be construed as giving a right to sue out a writ of error on any judgment on a caveat, in which an appeal is by this act allowed: and it is hereby declared that every such judgment shall be final unless an appeal is prayed during the term of that court in which it shall be pronounced.

1808.

Appeals there-  
on may be had.

Sec. 2. *And be it further enacted*, That so much of every act as requires or authorises the sheriff of Franklin to attend the court of appeals, shall be and the same is hereby repealed.

Sec. 3. *And be it further enacted by the general assembly*, That the office of sergeant of the court of appeals shall be and is hereby established, to which office some fit person shall be appointed and commissioned as the constitution directs, and shall hold his office during good behaviour: the person thus appointed shall take the oath prescribed by the constitution, and shall enter into bond with security to be approved by the court of appeals in the office of the clerk of that court in the penalty of ten thousand dollars, conditioned for the faithful discharge of the duties of his office: such bond shall be payable to the governor and his successors in office, and for any breach thereof or any defalcation in office, the same proceedings may be had as are authorised by the laws now in force on the bonds given by sheriffs for the general discharge of the duties of their office.

Office of serge-  
ant of the court  
of appeals erec-  
ted.

His oath.

To give bond.

Condition.

Legal effect &  
operation there-  
of.

Sec. 4. *And be it further enacted*, That it shall be the duty of the said sergeant to attend the court of appeals, and perform the same duties as are by law required of the sheriff of Franklin county, and for so doing the said

His duty.

## DECEMBER SESSION,

1808. court may make him a reasonable allowance, which shall in no case exceed two dollars per day.

And whereas the difficulty of conveying the process of the court of appeals to the sheriffs of remote counties in this commonwealth, is in many instances great and much delay, injustice and vexation are occasioned thereby : for remedy thereof,

Sec. 5. *Be it enacted*, That it shall be lawful for the clerk of the court of appeals at the request of any party to direct any process of that court to the sergeant, whose duty it shall be to execute the same, and for so doing he shall receive the same fee, and for neglecting it, subject to the same penalty which the sheriff is entitled by law to receive for such service, and subject to for such neglect, and shall moreover receive the sum of three cents for every mile which he shall necessarily travel in executing such process: *Provided however*, that if more than one defendant shall be included in such process, the sergeant shall receive mileage only for that one whose place of residence is most distant from the capitol. The mileage in all cases to be computed from the capitol to the place of residence of the defendant, unless he shall have been found, and the process executed on him in some place less remote, and in that case from the capitol to such place.

Sec. 6. *Be it further enacted*, That in all cases where any process shall have been directed to and executed by the sergeant, the party requiring it to be so directed and executed, shall be liable to pay him therefor, in the same manner as sheriffs' fees are now payable and collectable. But it shall be in the discretion of the court of appeals whether they will permit the mileage to be taxed in the bill of costs or not. And process which shall not on special request be directed to the sergeant, shall be directed and executed as heretofore, and as if this act had never passed.

Nothing in this act contained shall be construed to authorise a marshal to execute any writ of execution for costs.

The sergeant may appoint as many deputies as he may think proper, such deputies being approved of by the court of appeals, and he being responsible for their conduct.

This act shall be in force from its passage.

XVII. YEAR OF THE COMMONWEALTH.

83

CHAPTER XC.

1808.

*An ACT authorising the several Sheriffs in this Commonwealth to make certain conveyances.*

Approved February 11, 1809.

WHEREAS it appears to the general assembly that the several sheriffs of this commonwealth who have sold lands under the revenue laws, have from deaths, resignations, &c. failed in many instances to make conveyances to those who became purchasers of the lands as aforesaid: for remedy whereof,

*Be it enacted by the general assembly,* That the several sheriffs within this commonwealth, who now are or hereafter may come into office, shall be and they are hereby authorised and required to make conveyances to the purchaser or purchasers of lands sold as aforesaid, or lands sold under any execution, on their producing the certificate or the receipt of the former sheriff of the actual purchase and the payment of the full amount of money arising from said sale, as also a correct plat of said land, made out by some surveyor lawfully authorised to make the same: which conveyances when made shall be as good and valid in law, to all intents and purposes, as they would have been if made by the sheriff who made the sale.

This act to commence from the passage thereof.

CHAPTER XCI.

*An ACT for the appropriation of Money.*

Approved February 11, 1809.

This is the ordinary appropriation bill.

1809.

## December Session, 1809.

### CHAPTER XCII.

*An ACT respecting the fining of Petit Jurors for non-attendance.*

Approved December 23, 1809.

The section here referred to will be found in Vol. I, page 475.

*BE it enacted by the general assembly,* That the 50th section of the act of assembly passed in December in the year 1796, to reduce into one the several acts concerning the examination and trial of criminals, grand and petit juries, venires, and for other purposes, shall be and the same is hereby amended, so as to authorise the court to mitigate, below eight dollars, the fine authorised by that act to be imposed on any person who fails to attend the court as a petit juror, when summoned for that purpose.

### CHAPTER XCIII.

*An ACT to authorise the Editors of the Globe, printed at Richmond, to insert certain Advertisements.*

Approved December 23, 1809.

*BE it enacted by the general assembly,* That it shall and may be lawful for any advertisements which are required by law to be published in a newspaper, to be inserted in the Globe, printed at Richmond; and the editors of the said paper shall be entitled to the same fees and be governed by the like regulations as other printers in this commonwealth: *Provided,* that nothing herein contained shall be so construed as to authorise the insertion in the Globe of such advertisements as are particularly required by law to be published in the paper of the public printer.

This act shall commence and be in force from and after the passage.



## CHAPTER XCIV.

1809.

*An ACT establishing an Academy in the County of Barren.*

Approved December 23, 1809.

Sec. 1. *BE it enacted by the general assembly, That* Trustees:  
 Hardin Davis, John Gorin, Henry Crutcher, Richard  
 Garnett, John M'Ferren, John Monroe, William Lo-  
 gan, Samuel Marrell and Joel Yancey, gentlemen, shall  
 be and are hereby constituted a body politic and corpo-  
 rate, to be known by the name of the trustees of the  
 Glasgow academy; and by that name shall have perpet- Style.  
 ual succession and a common seal, with power to  
 change or alter the same at pleasure. And as a body General powers  
 corporate shall be authorised to exercise all the powers  
 and privileges that are now enjoyed by the trustees of  
 any academy or seminary of learning in this state; and  
 on the death, resignation or other disqualification of any  
 of the trustees aforesaid, or their successors, a majority  
 of the remaining trustees shall fill such vacancy; and  
 the person so appointed shall be vested with the same  
 power and authority as if specially named by this act;  
 and by the name and style of the trustees of the Glas- Judicial capaci-  
 gow academy, may sue and implead, or be sued and im- ty.  
 pleaded in any court in law or equity, or before any tri-  
 bunal having cognizance of the same.

Sec. 2. The said trustees and their successors shall May purchase  
 have power, in their corporate capacity, to purchase or or receive by  
 receive by donation, any lands, tenements, heredita- donation, lands,  
 ments, monies, rents, goods and chattels, and to hold the &c.  
 same by the name aforesaid, to them and their succes-  
 sors forever, for the use of said academy; and to sell,  
 alien or transfer any such lands, goods and chattels and  
 apply the proceeds to the use and benefit thereof. Al-  
 so to dispose of one third of the lands heretofore granted And sell the  
 by the general assembly of Kentucky, for the purpose of same,  
 establishing an academy in the county of Barren; the  
 proceeds of which shall be applied towards erecting the  
 necessary buildings and providing books and other ap-  
 paratus for the use of the said academy.

Sec. 3. The person first named herein, or in his ab- How a meeting  
 sence or refusal to act, the next shall notify the time and procured.  
 place for the first meeting of the trustees; and on the  
 attendance of a majority thereof, they shall appoint a  
 chairman and clerk, who shall severally take an oath, to

1809. be administered by some justice of the peace, well and truly to execute the duties of their office; and thereafter the board may be called by the chairman or any two of the trustees. The said trustees shall have power to adjourn from day to day, to make and ordain such by-laws, rules and ordinances as they may deem proper, not inconsistent with the laws of this commonwealth; and moreover to fix on a proper place for erecting the buildings for the said academy: *Provided*, that a majority of all the trustees shall be necessary to attend on the making any contract, by-laws, or fixing the permanent seat for the same.

May make by-laws.

Provido,

Sec. 4. A majority of said trustees shall have power to engage and employ a competent number of tutors and professors to the said academy, to fix their salaries and the salary of their clerk, as also the terms of tuition; and on the misconduct of any tutor, professor or student, may dismiss or expel such tutor, professor or student from the said academy.

May employ professors, &c.

This act shall commence and be in force from the passage thereof.

#### CHAPTER XCV.

*An ACT adding a small part of the County of Lincoln to the County of Mercer.*

Approved December 23, 1809.

Sec. 1. *BE it enacted by the general assembly*, That from and after the first day of March next, so much of the county of Lincoln as lies within the following bounds, to wit: beginning where the Mercer line crosses the road leading from Stanford to the Knob Lick, thence along said road eastwardly to the south-west corner of John Young's land, near the corner of Lincoln and Casey; thence along the line dividing the lands of said Young and David Caldwell nearly a north course to a line of the land of James Wilson, deceased; thence along Wilson's lines eastwardly and northwardly to the Mercer line; thence along the Mercer line to the beginning, shall be added and to all intents and purposes be considered as belonging to the county of Mercer.

Sec. 2. *Be it further enacted*, That the sheriff of the county of Lincoln, and the constables thereof, shall have full power to execute any process that may be put into

XVIII. YEAR OF THE COMMONWEALTH.

87

their hands against any person or the estate of any person within the aforesaid bounds prior to the first day of March next, and to collect all officers' fees or public dues that may be in their hands and remain unpaid on the said first day of March next, and to account for the same in the same manner as if this act had not passed.

1809.

This act shall commence and be in force from and after the first day of March next.

CHAPTER XCVI.

*An ACT for the relief of William Lacey.*

Approved January 4, 1810.

He had, through mistake, paid for two head-right claims instead of one. This act permitted him to have a credit for what had been improperly paid, in payment for other lands.

CHAPTER XCVII.

*An ACT for the relief of the heirs of James Armstrong, deceased.*

Approved January 4, 1810.

They were entitled by descent to 200 acres of head-right land; the surveyor had failed to record the certificate, although he had certified it to the register as recorded. This act permitted it to be recorded.

CHAPTER XCVIII.

*An ACT for the erection of a Bridge across Rough Creek, in the County of Ohio, and across North Elkhorn, in the County of Scott.*

Approved January 4, 1810.

Sec. 1. BE it enacted by the general assembly, That it shall and may be lawful to erect and build a bridge over and across Rough creek, opposite, or nearly opposite the main cross street of the town of Hartford, in the county of Ohio, in such manner as may be approved of by the commissioners herein after named: *Provided*, that by erecting said bridge the passage of boats and other vessels passing up and down said creek shall not be obstructed thereby; and also that consent of the owner or owners of the land on and against which said bridge may be abutted, be first obtained; or the said owner or owners shall be paid a reasonable compensation therefor.

Bridge may be built across Rough creek.

Provide,

1809. *Sec. 2. Be it further enacted, That Joshua Crow, William Rogers, Christopher Jackson, James Baird, jun. and Jesse Cravens be and they or any three of them are hereby appointed commissioners to superintend the building of said bridge; and it shall and may be lawful for said commissioners or any three of them to put on foot a subscription to raise any sum of money not exceeding one thousand dollars, to be appropriated towards defraying the expence which may accrue in consequence of erecting and building said bridge; and any surplus money to be appropriated to repairing the road one mile on the north side of Rough Creek. And the said commissioners as aforesaid, shall have full power and authority to sue for and recover by warrant or otherwise all such sums of money or property which may be subscribed for the purpose of building the said bridge as aforesaid.*

Commissioners to superintend its building.

To raise money by subscription.

If any surplus, how appropriated.

Their powers for collection.

County court of Ohio may fill vacancies.

Mode of proceeding to obtain land for the purpose.

Commissioners to build a bridge across Elkhorn.

To raise money by subscription.

And in case of the death, resignation, removal, refusal to act, or other disabilities, the county court of Ohio county shall have full power to fill all vacancies occasioned thereby, and shall be vested with the same power and authority as the commissioners in this act before mentioned.

*Sec. 3. Be it further enacted, That prior to building of said bridge, unless the consent of the owner or owners of the land on which said bridge is to be erected, for said commissioners to apply to the county court of said county, who on application shall award a writ of *ad quod damnum* in the usual form, which shall be executed by the sheriff of said county, and by him returned to the said county court. And the commissioners shall pay to the owner of said land the value returned on the execution of said writ, prior to building said bridge.*

*Sec. 4. And be it further enacted, That David Flournoy, Griffin Kelley, Samuel Tully, James Beaty, John Hurst, and James Maccoun be and they or any three of them, are hereby appointed commissioners to superintend the building of a bridge across the north fork of Elkhorn, where the road from Griffith's mill, in the county of Scott, to Lexington crosses the same.*

And it shall be lawful for the said commissioners, or any three of them, to raise by way of subscription, any sum of money not exceeding one thousand dollars, to be appropriated towards defraying the expence of

building said bridge, and keeping the same in repair; 1809.  
 and any surplus which may remain in the hands of said  
 commissioners, shall be applied to repairing said road. <sup>Surplus appro-</sup>  
 And the said commissioners shall have the same powers <sup>priated.</sup>  
 to enforce collection, and shall proceed in the same man- <sup>Commissioners'</sup>  
 ner as is by this act directed to be had and done, by the <sup>powers-</sup>  
 commissioners authorised to build a bridge across  
 Rough creek; and in case of the death, resignation,  
 removal, refusal to act, or other disabilities, the county <sup>County court of</sup>  
 court of Scott county shall have full power to fill all <sup>Scott to fill va-</sup>  
 vacancies occasioned thereby: who shall be vested with <sup>cancies.</sup>  
 the same powers and authority as the commissioners in  
 this section before mentioned.

CHAPTER XCIX.

*An ACT to amend and explain an act, entitled "an act  
 to repeal the provisional clause of the act establish-  
 ing the County of Harrison," and an act supplemen-  
 tary thereto.*

Approved January 1810.

WHEREAS doubts are entertained as to the extent  
 of the territory added to Harrison county by the forego-  
 ing laws: for removing of which,

Sec. 1. *Be it enacted by the general assembly,* That  
 said laws shall not be so construed as to affect the coun-  
 ties of Pendleton and Nicholas, or either of them; but  
 that the boundaries of said counties of Pendleton and  
 Nicholas, shall remain as they existed before the pas-  
 sage of said laws.

Sec. 2. *Be it further enacted,* That to ascertain the  
 point mentioned in the act establishing Harrison county,  
 eight miles north of Bourbon court-house, the surveyor  
 shall run a due north course according to the true meri-  
 dian.

This act shall commence and be in force from and af-  
 ter its passage.

CHAPTER C.

*An ACT to incorporate the Shelby Library Company.*

Approved January 4, 1810.

Sec. 1. *BE it enacted by the general assembly,* That  
 Thomas Johnston, Edward Talbot, Benjamin Sharp, <sup>Trustees.</sup>

1809. William Adams, George Piersey, John Ketcham, Joseph Bondurant, James Ford, and David Demaree, and their successors, duly appointed as is hereafter directed, be and they are hereby constituted a corporation and body politic, to have continuance for ten years, by the style of the trustees of the Shelby library company.
- Continuance & style.** Sec. 2. *And be it further enacted*, That all sums of money, books, goods or chattels, in possession of, or that are now due by subscription, contract or otherwise, or may hereafter be subscribed for the use of said company, is hereby vested in said corporation; and that they may receive any gift, grant or bequest of money, books, goods or chattels which are made by any person or persons capable of making said gifts or grants, all which sums of money, goods and chattels, to be laid out in books, maps, charts, &c. for the benefit of said corporation agreeably to the intention of the donors.
- Property of the institution vested in trustees.** Sec. 3. *And be it further enacted*, That the said corporation by the style aforesaid, shall be capable in law to sue and be sued, plead and be impleaded, before any court or courts, or before any judge or justice of this commonwealth, or elsewhere, in all manner of suits, actions or complaints of any kind whatsoever, in as full and effectual a manner as any other person or persons, corporation or bodies politic, may or can do.
- How to be appropriated.** Sec. 4. *And be it further enacted*, That the said corporation shall have power to use a common seal, and the same to break and renew at pleasure; to appoint a librarian, secretary and treasurer; to appoint their duty, and fix their compensation; to remove them from office and appoint others in their place, as often as they think fit; to make such by-laws as may be useful to the institution, and the same to alter and abrogate at pleasure; to fix the price of any new shares, and annual contributions; to fill any vacancy that may happen in their number between two annual meetings; to levy and collect fines and forfeitures, and to determine and transact all business appertaining to said corporation or said company, agreeably to the rules, ordinances and by-laws thereof, during their continuance in office: *Provided however*, that not less than five of the trustees shall be a quorum to do business; that no by-laws shall be made repugnant to the laws of this commonwealth.
- Legal capacity.**
- Seal.**
- To appoint officers.**
- Their duty and pay.**
- Duty of trustees.**
- Proviso.**

## XVIII. YEAR OF THE COMMONWEALTH.

91

Sec. 5. *And be it further enacted*, That there shall be an annual meeting of the members of said company at the library, or other suitable place as the trustees may direct, of which the trustees shall cause at least thirty days notice to be given by advertisement at three or more of the most public places in the neighborhood of the library; at which time and place the members or such of them as are present either personally or by proxy, evidenced by the hand writing of the shareholder, shall elect by ballot nine trustees out of their number to serve for the year next ensuing their election, and until others shall be elected to fill their place, and consent to serve: *Provided always*, that a majority of the shareholders either personally or by proxy, shall be necessary to elect the trustees; that each shareholder shall be entitled to one vote, and no person shall be entitled to a vote who is in arrears to the said institution, either by fine, forfeiture or contribution.

1809.

To hold an annual meeting.

Shareholders may vote by proxy.

Provido.

Sec. 6. *And be it further enacted*, That the first election for trustees shall be held on the first Saturday in August next, and on the first Saturday in August in every year thereafter; and in case a majority of the members should not appear to choose trustees at the times appointed, the elections shall be held thereafter as the attendance of the majority can be obtained for that purpose, previous notice thereof being given as aforesaid.

Election, when held.

Sec. 7. *And be it further enacted*, That each shareholder shall be at liberty to transfer or relinquish his share or shares, after paying all arrears due by subscription or otherwise, and shall be forever thereafter released from all contributions on account thereof.

Shares may be transferred.

This act shall be in force from and after its passage.

### CHAPTER CI.

*An ACT making provision for the payment of the witnesses in the impeachment of William C. Rogers.*

Had its effect.

Approved December 23, 1809.

### CHAPTER CII.

*An ACT erecting a County out of the Counties of Lincoln, Pulaski, Madison, and Knox.*

Approved January 8, 1810.

Sec. 1. *BE it enacted by the general assembly*, That from and after the first day of April next, so much of the

1809. **Boundaries.** counties of Lincoln, Pulaski, Madison and Knox, as are included in the following bounds, to wit : beginning at the mouth of the Horse-lick fork, and running down Rockcastle to where the Madison state road crosses the same ; thence with that road to include John Pearle's at the Hazlepatch ; thence a direct line where the reserved line crosses Rockcastle ; thence with the reserved line, to where the Crab Orchard road crosses the Bee lick branch ; thence a direct line to the mouth of Noak's creek, about one half mile above English's old station ; thence a direct line to the nearest part of the Garrard line to Edward Mason's ; thence with the Garrard line to Copper creek ; thence up the same to its head ; thence a direct line to the Round Stone lick ; thence a direct line to Moses Batterton's ; from thence a direct line to Thomas Hootten's so as to leave them in Madison county ; thence a direct line to a point on Horse lick creek, one half mile below the Double lick on said creek ; and thence down Horse lick creek to the beginning, shall be one distinct county, called and known by the name of **ROCKCASTLE.**

**Name.**

**Justices thereof when & where to meet.** Sec. 2. The justices of the peace for the county of Rockcastle shall meet at the dwelling-house of Stephen Langford, on the first Monday in April next, and after taking the necessary oaths of office, and qualifying their sheriff agreeably to the constitutions of the United States and this state, and as required by law, they shall proceed to elect a clerk, to whose permanent appointment it shall be necessary for a majority of all the justices in commission for said county to concur ; but if such majority cannot be obtained in favor of any one, then the court shall appoint a clerk pro tempore.

**To qualify their sheriff and appoint a clerk.**

**Courts, when to be held.** Sec. 3. The county court in Rockcastle shall commence on the first Monday in each month, except the months in which the circuit court for Rockcastle shall be holden ; and the circuit court for Rockcastle shall commence on the first Monday in May, August and February, and may, if necessary, continue to sit six days. The county of Rockcastle shall form a part of the ninth district, and the circuit judge assigned to that district shall attend and preside in the circuit court for Rockcastle, as by law he is directed in other circuit courts.

**Attached to the 9th district.**

**Power of cer-** Sec. 4. The circuit and county courts and justices of



the peace, in their respective counties, from which the county of Rockcastle is taken, shall have jurisdiction over all matters instituted prior to the commencement of this act, and brought before them, as if this law had not passed. 1809.  
tain counties in matters therein depending.

Sec. 5. It shall be lawful for the sheriffs, constables and collectors, in their respective counties, from which Rockcastle county is taken, to collect all fees and money and execute all process, writs and executions as the law directs, which were put into their hands for collection or execution previous to the commencement of this act, and shall account for the same as if it had not passed. Power of certain officers.

Sec. 6. The county court of Lincoln shall appoint a commissioner of the tax in Rockcastle county, for the year 1810, who shall execute the duties and be governed by and subject to the laws regulating commissioners of the tax in this state; and the clerk of Rockcastle county shall in like manner perform his duty in relation thereto. County court of Lincoln to appoint a commissioner of the tax

Sec. 7. The justices of the peace and assistant judges for the county of Rockcastle shall fix on a place for the permanent seat of justice in said county; but a majority of the whole number of them shall be necessary to concur therein; paying a just regard to the most central, convenient and eligible spot in the county for that purpose. And the county court of Rockcastle shall, as soon as may be, cause the necessary public buildings to be erected, and in every other respect lay off and do what may be necessary or required by law in the general establishment of towns. The courts in said county shall be holden at said Langford's until the place for the seat of justice shall be fixed on. Justices and assistant judges to fix the permanent seat of justice.

Sec. 8. The county of Rockcastle shall be an election precinct of Lincoln county, and the votes taken therein shall be compared at Stanford, on the sixth day from the commencement of the election, by the sheriffs of Lincoln and Rockcastle; and in case of electing a senator, then by the sheriffs of Lincoln, Casey and Rockcastle, who in either case shall certify in favor of the person having the greatest number of votes, as required by law. And the county court of Rockcastle shall appoint a clerk and judges of election, as is required by law regulating that subject throughout the state. To form an election precinct of Lincoln.

This act shall be in force from its passage.

1809.

## CHAPTER CIII.

*An ACT for the improvement of the Navigation of the South Fork of Kentucky River.*

Approved January 8, 1810.

WHEREAS it is represented to the present general assembly, that great advantages would accrue to the inhabitants of this commonwealth by the removal of the obstructions to the navigation of the south fork of the Kentucky river,

**Commissioners' names,**  
**Their powers.**

Sec. 1. *Be it enacted by the general assembly,* That Daniel Garrard, John Bates and Beverly Broddas, be and they are hereby appointed commissioners, who, or a majority of whom, are hereby vested with power to raise by subscription, in money, property or labor, a fund for the purpose of clearing and keeping in repair the navigation of said river, the removal of all fish-pots and dams, cut and clear away all timber projecting over said stream, shrub all points of islands, and remove such other obstructions in the channel as may impede the navigation of said river, from its mouth to the mouth of Goose creek, and up said creek to the salt-works of James Garrard and sons.

**May employ hands for opening said river.**

Sec. 2. *Be it further enacted,* That so soon as in the opinion of said commissioners, or a majority of them, there is a sufficient sum or sums of money or property subscribed for clearing and keeping in repair the navigation of said stream, they shall employ a sufficient number of hands for the removal of all fish-pots and dams of every description, remove all logs, cut and clear away all timber projecting over said stream, shrub all points of islands and remove such other obstructions as may impede the navigation of said river; which hands shall be under the direction of said commissioners, and shall be paid by them out of the sum or sums of money or property so subscribed and appropriated as aforesaid.

**Commissioners to execute bond**

Sec. 3. *Be it further enacted,* That so soon as the aforesaid commissioners shall have procured subscriptions agreeably to this act, and entered into bond with good security in the county court of Clay, in the penalty of \$ 1000, payable to the commonwealth of Kentucky, conditioned to appropriate the same to the removal of obstructions of said stream, and said commissioners immediately after entering into bond aforesaid, they

or a majority of them shall immediately proceed to employ hands, and superintend the clearing out of said stream in the manner herein directed. 1809.

Sec. 4. *Be it further enacted*, That any person who shall build any dam, or place any other obstructions in said stream, so as to impede the navigation, shall on conviction before any justice of the peace, forfeit and pay the sum of five dollars for every twenty-four hours that the same shall have remained in said stream, one half to the informer and the other half to the improvement of the navigation of said river. Penalty on persons placing obstructions there in.

Sec. 5. *Be it further enacted*, The commissioners aforesaid for their services under this act, shall severally receive the sum of one dollar per day, out of the subscriptions, for each day they may be actually engaged in employing hands and superintending the clearing out and keeping in repair the navigation of said stream. Allowance to commissioners.

This act shall be in force from and after its passage.

#### CHAPTER CIV.

*An ACT authorising the Judges of the Circuit Courts to hold additional Terms in certain Counties.*

Approved January 8, 1810.

*BE it enacted by the general assembly*, That each of the following circuit courts shall hold an additional session in the present year, to wit: the Fleming circuit court to commence on the fourth Monday of January 1810, and sit six days, if necessary; the Jessamine circuit court to commence on the third Monday in January 1810, and sit six days, if necessary; the Livingston circuit court to commence on the second Monday of February 1810, and sit six days, if necessary. Fleming. Jessamine. Livingston.

This act shall be in force from its passage.

#### CHAPTER CV.

*An ACT authorising the Judges of the Circuit Court of Fayette to hold an additional Term, and for other purposes.*

Approved January 8, 1810.

WHEREAS it is represented to the present general assembly, that the Fayette circuit court, owing to the length of its present sessions, interferes with the sessions Preamble.

1809. of the Scott circuit court, and thereby prevents the attendance of the circuit judge in each court, as is required by law: for remedy whereof,

*Sec. 1. Be it enacted by the general assembly, That* The terms of the said circuit court of Fayette, at its stated sessions, said court limited to 18 days. shall hereafter sit eighteen juridical days, if the business before the court shall require it, and no longer, any law to the contrary notwithstanding.

And whereas it is also represented that the said circuit court of Fayette, from the late changes in the judiciary and other causes, has now before it a great number of chancery causes, which, as the court is now organized, cannot be decided on for a number of years; and whereas it is deemed expedient that such causes should be determined with reasonable expedition:

*Sec. 2. Be it therefore enacted, That it shall and may* Additional term to be held in January in each year for chancery business. be lawful for the said circuit court of Fayette to hold an extraordinary session, to commence on the fourth Monday in January annually, and sit thirty juridical days, if the business before them require it; at which session the said court shall possess chancery jurisdiction only, and shall be governed by the laws regulating chancery proceedings in this commonwealth.

*Sec. 3. And be it further enacted, That it shall be the* The duty of the clerk. duty of the clerk of the circuit court of Fayette, before the commencement of the January session aforesaid, to make out an issue docket for said court, of all the chancery causes ready for trial in his office, and the court shall proceed to try the same, in the same manner and under the like regulations as is directed and observed in other courts of chancery in this commonwealth.

*Sec. 4. And be it further enacted, That it shall be the* The duty of the sheriff & other officers. duty of the sheriff and all other officers of said circuit court, to attend the same at its January session aforesaid.

*Sec. 5. And be it further enacted, That nothing in this* County court act contained shall be construed to alter or change the times of holding the county courts of the said county of Fayette. not to be affected.

This act shall be in force from its passage.

## CHAPTER CVI.

1809.

*An ACT for the relief of the Sheriffs of certain Counties in this Commonwealth.*

Approved January 8, 1810.

The provisions of this act related to revenue, have had their effect and are no longer interesting.

## CHAPTER CVII.

*An ACT authorising the erection of a Bridge across South Licking, at Cynthiana, and for the better regulation of said Town.*

Approved January 8, 1810.

WHEREAS it is represented to the present general assembly, that the erection of a bridge across South Licking, at Cynthiana, in Harrison county, would be of public utility; and that the original plat of said town is very imperfect or entirely destroyed: wherefore,

Sec. 1. *Be it enacted by the general assembly, That* it shall and may be lawful for the county court of said county to erect a bridge across South Licking, any where opposite the town of Cynthiana, by subscription and county levy, or either of them, and upon such plan as said court may deem advisable.

County court may erect said bridge.

Sec. 2. *Be it further enacted, That* prior to the erection of said bridge, unless the consent of the owner or owners of the land upon which the abutments thereof are to be built can be obtained, it shall be lawful for said court to award a writ of *ad quod damnum*, in the usual form, for the purpose of ascertaining the value of said land upon which said abutments are to be erected, which writ shall be executed by the sheriff of said county and by him returned to said court, and said court shall cause payment to be made to the owner or owners of such land, the value so ascertained by said inquest, prior to the erection of said bridge.

Mode of proceeding to obtain land therefor.

Sec. 3. *Be it further enacted, That* the board of trustees of the town of Cynthiana are hereby authorised and directed to appoint some fit person to make out a complete and accurate survey and plat of said town, according to the original plan thereof, designating the lots, their number, size, the streets and alleys, their width, &c. and the person thus appointed by said trustees shall set up at such corner or corners as they shall direct,

The trustees of Cynthiana may regulate the plat of said town.

1809.

To be returned  
to the county  
court & record-  
ed.

stones or posts for the future regulation of said town; and when the plat of said town shall be completed and approved by said trustees, or a majority of them, said trustees shall give public notice by advertisement at the court-house door in said town, at least one month preceding the county court at which the application is to be made, that the plat so made out will be presented to said court for their approbation; and if upon examination said court finds said plat to be correct, they shall direct their clerk to record the same, and certify the original to the clerk of the board of trustees for said town, who shall attach said plat to the book of proceedings of said trustees, and such plat shall forever afterwards be deemed and taken as the true and correct plan of said town.

This act shall be in force from and after the passage thereof.

#### CHAPTER CVIII.

*An ACT for the relief of Thomas K. Edgman.*

Approved January 3, 1810.

The relief was against the legal consequences of an irregular proceeding relative to a tract of head-right land.

#### CHAPTER CIX.

*An ACT to amend and reduce into one the several acts regulating Middletown, in Jefferson County.*

Approved January 15, 1810.

Qualification of  
voters.

Elections for  
trustees.

Sec. 1. *BE it enacted by the general assembly, That* it shall and may be lawful for the freeholders, house-keepers and free male inhabitants of Middletown, in Jefferson county, (free negroes and mulattoes excepted) who have resided therein for the space of six months, and who possess in their own right, within the said town, property to the value of fifty dollars, to elect and choose annually, on the Saturday preceding the first Monday in August, five trustees; which election shall be conducted by one of the late or then acting trustees, to be appointed by the board for that purpose; ten days previous notice thereof shall be advertised in the most public places in said town, by the chairman of the late or then acting trustees; and the return of the persons so elected shall be made to the clerk of said board, which shall be recorded in their books.

# XVIII. YEAR OF THE COMMONWEALTH.

99

Sec. 2. That no person shall be capable of being elected or of acting as a trustee, who is not entitled by law to vote at an election of trustees.

1809.

Qualification of trustees.

Sec. 3. That vacancies occasioned by death, disqualification or otherwise, shall be supplied by elections to be made in manner herein before directed, on a day to be appointed by the remaining trustees, and return thereof made in manner herein directed before.

Vacancies, how filled.

Sec. 4. That the said trustees and their successors, or a majority of them, shall have power to erect a market-house in said town; to appoint a clerk of the market and prescribe his duties; to regulate and repair the streets, alleys and highways in said town, to make provision for the collecting and accounting for the taxes. they are empowered by this act to levy, by appointing a collector, and directing distress for delinquencies, or by any other ways and means, and to make such ordinances and regulations, not contrary to the laws and constitution of this commonwealth, as shall by a majority of them be thought necessary for the police of said town, and affix a penalty for the breach of any the said by-laws, not exceeding the sum of ten dollars, to be recovered at the suit of the trustees, in the same manner that sums of like amount are now recoverable by law: *Provided always*, that before any by-law or ordinance enacted by the trustees of said town, shall have any operation, it shall be advertised for two weeks successively in the most public places in said town.

Their powers.

Provido.

Sec. 5. That the said trustees shall have power to impose taxes, not exceeding the sum of four hundred dollars annually, on the titheables and property real and personal, within the limits of said town.

May impose taxes.

Sec. 6. That whosoever shall erect any nuisance within the limits of said town, or shall cause any obstructions in the streets or highways of the same, shall forfeit and pay the sum of three dollars; whoever shall be guilty of running or racing horses within the limits of said town, shall forfeit and pay the sum of three dollars; whoever shall be guilty of shooting within the boundaries of the in-lots in said town, shall forfeit and pay the sum of three dollars; the forfeitures accruing by virtue of this act, shall be sued for in the name of the trustees of said town, and recoverable in the manner that sums of like amount are recoverable by law; all sums of

Penalty for certain offences.

1809. money recovered by virtue of this act shall be paid to the said trustees or to their successors, and shall be by them appropriated to the use of said town.

And whereas doubts are entertained about the legality of the establishment of said town :

The establishment of said town legalised.

Sec. 7. *Be it further enacted*, That the establishment thereof, made pursuant to an order of the Jefferson county court, shall be as valid to all intents and purposes as if the same had been done by an act of the legislature ; and that the trustees elected by virtue of this act, or a majority of them, shall as soon as may be after the election, proceed to make or cause to be made out a plat of said town, to be made agreeable to the original plat thereof ; which plat, when completed shall for the greater safety and convenience of lot-holders in said town, be recorded in the books of said trustees by their clerk, and also in the clerk's office of the Jefferson county court, and that the same shall be binding on the several lot-holders in said town.

Farther disqualification of trustees.

Sec. 8. That whenever a trustee shall cease to be an inhabitant of said town, he shall thenceforward be considered as disqualified, and another trustee shall be elected and returned in his stead, in manner and form herein before directed.

Regulations upon succession of trustees.

Sec. 9. That immediately at the close of every annual election of trustees directed by this act, the powers of their predecessors shall cease ; and the trustees so elected shall be put in possession of the property, money, papers, and records, which the trustees whom they succeeded had possession of ; and the trustees elected by virtue of this act shall possess and exercise the same powers and authority, as now by law are vested in the trustees of said town, in addition to those powers herein granted.

Collector's duties and power.

Sec. 10. That the collector to be appointed by the trustees as aforesaid, do enter into bond with such security as may be approved of by said trustees, with a penalty in double the sum to be collected, payable to the said trustees, and their successors in office, and with a condition for the faithful execution of his office ; and that the said collector shall have the same powers to collect, have the same allowance for collection, and be liable to be proceeded against by the said trustees, and their successors, in the same manner for such money as he



shall or ought to collect, and does not pay to the said trustees, or their successors, as sheriffs are entitled and subjected to, with respect to county levies. 1809.

Sec. 11. That the collector appointed as aforesaid, May distrefs. shall have power to collect by distress or otherwise taxes imposed upon any person or persons by virtue of this act, from such person or persons, wheresoever he or they may be found, within this commonwealth.

Sec. 12. And be it further enacted, That all real property within the limits of said town, charged with any tax or taxes by virtue of this act, shall be liable to be sold by the collector aforesaid, for the payment thereof, after having been advertised at the most public places in said town, and in some public newspaper, published nearest to said town, at least five weeks successively previous to such sale; and the said collector is hereby authorized to make a proper deed of conveyance for property sold by him as aforesaid, which deed (when recorded) shall effectually vest the title of such property in the purchaser: *Provided nevertheless*, that in all other cases of distress made by said collector, ten days previous notice by advertising the same, at the most public places in said town shall be sufficient. May sell real property. *Provido.*

Sec. 13. That the collector aforesaid, shall be liable to account to and with the trustees aforesaid, for all sums of money which by virtue of this act, he may be required to collect within four months after he shall receive orders to make such collection. Shall account for taxes, &c.

Sec. 14. That the first election of trustees by virtue of this act, shall take place on the first Saturday in March next, in manner and form herein before directed; the trustees then elected to continue in office until the annual period of election in the year 1811; and after the said first Saturday in March, the powers and duties of the present trustees in said town shall cease and expire. First election of trustees, when to be held.

This act shall commence and be in force from and after its passage.

#### CHAPTER CX.

*An ACT to explain the privileges of the Prison Bounds.*

Approved January 15, 1810.

This necessarily repeals a part of the county court act of 1796, sec. 6—  
See Vol. I. page 376.

*BE it enacted by the general assembly*, That the privilege of the prison bounds shall not be extended to

1809. those who shall be ordered to be committed to prison for contempt, by any tribunal or officer authorised by law to punish for contempts; nor to those who shall by the judgment of any tribunal or magistrate be sentenced to imprisonment, any act or law to the contrary notwithstanding.

This act shall be in force from its passage.

### CHAPTER CXI.

*An ACT for the better regulation of the Town of Russellville, and for other purposes.*

Approved January 15, 1810:

Qualification of voters.

May elect trustees.

Vacancies, how filled.

Their power to establish a market.

Sec. 1. *BE it enacted by the general assembly,* That it shall and may be lawful for the free male citizens, residents of the town of Russellville, above the age of twenty-one years, (free negroes, mulattoes and Indians excepted) who have resided in said town for the space of six months, and all other persons owning freehold estate in said town, to elect and choose annually on the first Monday in August, five trustees, who shall be freeholders resident in said town; which election shall be conducted by one of the late or then acting trustees, to be appointed by the board of trustees for that purpose; ten days previous notice thereof shall be given by advertising the same in three (at least) of the most public places in said town, and two weeks successively in one of the papers printed in said town (if one shall be there printed); which advertising shall be done by the chairman of the late or then acting trustees, and the return of the persons so elected shall be made to the clerk of said board, which shall be recorded in their books.

Sec. 2. That vacancies occasioned by death, resignation or otherwise shall be supplied by elections, to be made in manner herein before directed, on a day to be appointed by the remaining trustees, and return thereof made in manner herein before directed.

Sec. 3. That the said trustees and their successors, or a majority of them, shall have power to erect a market-house in said town, on the public ground, or such other lot as they may procure, and appoint a clerk to said market-house, when it may be necessary, and prescribe the duties of said clerk.

Sec. 4. The trustees shall have power to impose taxes on the citizens of said town who shall be entitled to vote for trustees, and that said taxes shall be apportioned agreeably to the property held by each citizen within said town: *Provided*, that the tax levied shall not exceed the sum of four dollars per annum on any one citizen, and any citizen of said town who has no visible property in said town, shall be taxed in any sum not exceeding one dollar; and all lots and other property in said town, held by non-residents, shall be taxed agreeably to the value of said property in proportion as the citizens of said town are taxed.

1809.

To impose tax-  
cs.

Sec. 5. That the trustees of said town shall have power to appoint a person to take in a list of the persons taxable, and the taxable property in said town: and that the person so appointed, shall at such time as the trustees may direct, proceed to take in and list in a book the list of the persons taxable, and the taxable property, and return the same to the chairman of the trustees; and the several lists of taxable property shall be given in by each citizen upon oath; which oath the said person so appointed to take in the same, shall have power and authority to administer.

To appoint an  
affessor.

Sec. 6. *And be it further enacted*, That the said trustees shall have power and authority to regulate and repair the streets of said town, to remove nuisances and obstructions therein, at the expence of the party or parties who occasioned them: *Provided*, the party or parties will not remove them on receiving notice from the trustees aforesaid; and when such person or persons fail, after having notice given them, to remove such nuisances or obstructions, the trustees shall on failure thereof immediately have it done; and when done, the trustees of said town may proceed by warrant before some justice of the peace, of the town or county, for the recovery of such sum or sums of money as may accrue in the removal of such nuisances or obstructions in said town.

To repair the  
streets, remove  
nuisances, &c.

Sec. 7. *And be it further enacted*, That the trustees of said town shall have power and authority to make provision for the collecting and accounting for the taxes they are empowered by this act to levy, by appointing a collector and directing distress for delinquencies, and to make such rules and regulations, not contrary to the laws and constitution of this commonwealth, as shall by

Appoint a col-  
lector.To make by-  
laws, &c.

1809.

{

a majority of them be thought necessary for the police of said town ; and affix a penalty for the breach of any by-law (if the same was committed by a free person) not exceeding ten dollars, to be recovered at the suit of the trustees, in the same manner that sums of like amount are now recoverable by law ; and if committed by a negro, a number of stripes not exceeding twenty-five : *Provided always*, that before any by-law enacted by the trustees of said town shall have any operation, it shall be advertised for two weeks successively in the most public places in said town, and inserted twice in some newspaper, if one shall be printed in said town.

Proviso.

Regulations up-  
on a succession  
of trustees.

Sec. 8. That immediately after the close of every annual election of trustees directed by this act, the powers of their predecessors shall cease : and the trustees so elected shall be put in possession of the property, money, papers and records, which the trustees whom they succeeded had possession of.

Collector to  
give bond.

Sec. 9. That the collector to be appointed by the trustees as aforesaid, do enter into bond with such security as may be approved of by said trustees, with a penalty in double the sum to be by him collected, payable to the said trustees and their successors in office ; and with a condition for the faithful execution of his office ; and that the said collector shall have the same powers to collect, and have the same allowance for collecting, as sheriffs now have for the collection of the county levy ; *And provided*, said collector does not make his collections or pay over the same when collected, agreeably to the provisions of this act, on ten days previous notice being given, a judgment may be recovered against said collector by the trustees in the county court, for the full amount put into his hands to collect, and award execution thereupon.

His allowance  
and duties.

Trustees to e-  
nact by-laws a-  
gainst certain  
offences.

Sec. 10. *And be it further enacted*, That the trustees of said town shall have full power and authority to enact by-laws to prevent shooting at a mark, running or racing horses, or shewing stud horses within the bounds and limits of the in-lots of said town : and that the said trustees shall have further power and authority to pass by-laws to suppress the unlawful assemblage of the negroes of said town, and the negroes that may resort to said town ; and the trustees may appoint a watch and patrol in said town, whenever they may deem it neces-

sary, under such rules and regulations as they may think proper, the same not being contrary to the laws of this commonwealth: *Provided however*, that the patrol so appointed by said trustees shall be governed by the laws now in force, relative to patrollers appointed by the county court.

1809.

Proviso.

Sec. 11. The trustees of the town of Russellville shall have power and authority to make rules and regulations to guard against injury that might be done by fire in said town, and for that purpose may form the citizens of said town into a fire company or companies, and compel the service and attendance of said company or companies, under such fines and forfeitures as shall not be oppressive or unreasonable: and that this act may be more completely carried into effect, the trustees of said town shall have full power and authority to call out in rotation the citizens of said town, between the age of sixteen and forty-five, to serve as a watch and patrols, at such time and such length of time as the trustees may think proper.

Also to guard  
against fire.And provide a  
watch.

Sec. 12. *Be it enacted by the general assembly*, That the county court of Logan shall have full power and authority to lay in their county levy a sum of money sufficient to dig and finish a well on the public square in the town of Russellville. Every act and part of acts as comes within the purview of this act, shall be and the same is hereby repealed.

County court of  
Logan to lay a  
levy to dig a  
well.

Sec. 13. *Be it enacted by the general assembly*, That in all cases where a judgment shall be recovered by the provisions of this act, against any collector, in the county court, judgment shall be given for costs, with an attorney's fee and fifteen per centum damages and legal interest.

Regulations on  
judgments a-  
gainst collectors

This act shall commence and be in force from its passage.

## CHAPTER CXII.

*An ACT authorising Samuel Short to enter and survey 300 acres of land, on which he now resides.*

Approved January 15, 1810.

The land lay in Hopkins county, he had settled on it under a certificate granted to Robert Hooker; Hooker afterwards relinquished his right and thereby destroyed Short's claim.

1809.

## CHAPTER CXIII.

*An ACT establishing Election Precincts in the Counties of Clay and Gallatin.*

Approved January 15, 1810.

Precinct formed in Clay.

County court to appoint judges and clerk to the elections, &amp;c.

Sheriffs of Clay and Floyd to meet and compare polls, &amp;c.

Precinct formed in Gallatin.

Sec. 1. *BE it enacted by the general assembly,* That all that part of the county of Clay contained in the following boundary, to wit: beginning at the mouth of the south fork of the Kentucky river, thence up the south fork to the mouth of Cow creek, thence up said creek to the head thereof, thence a direct course to the head of Long's creek, thence down said creek to its mouth, thence up the south side of the middle fork of Kentucky, so as to include all the inhabitants on the waters of said fork to the county line; thence with the county lines of Clay, Floyd and Estill, to the beginning, shall be deemed an election precinct for the county of Clay, and the election shall be held therein at the house Edward Calahan. The county court of Clay shall annually appoint two judges of the election resident in said precinct, and a clerk, whose duty it shall be together with the sheriff or deputy sheriff of the county of Clay, to attend at the said place of holding elections on the days required by law, and after taking the necessary oaths, to conduct the election under the same rules and regulations as is prescribed in other cases of elections; and on failure in the judges or clerk to attend, their place shall be supplied by the sheriff calling on some discreet citizen of said precinct, and all the voters in said precinct shall vote therein and not elsewhere; and the poll taken in said precinct shall be added to and considered a part of the poll of Clay county.

Sec. 2. *Be it further enacted,* That the sheriffs of Clay and Floyd shall meet at the house of said Calahan on the Monday succeeding every election and compare the polls, under the same rules and regulations as they were heretofore required to meet and compare the polls at Clay court-house.

Sec. 3. *Be it further enacted,* That all that part of Gallatin county within the following bounds, to wit: beginning at the junction of the Big Lick creek with Eagle, thence up said Lick creek to the forks, thence up the middle fork to its head, thence a direct line to the corner of Boone and Pendleton, in the Gallatin line, thence

with said line to the Franklin line, thence with the Franklin line to the Kentucky river, thence down the same to the mouth of Eagle creek, thence up Eagle to the beginning, shall be an election precinct, to be known by the name of the Eagle creek precinct; and the elections therein shall be held at the house of Nathaniel Sanders within the said precinct.

1809.

Sec. 4. *Be it further enacted*, That a deputy sheriff, clerk and judges to attend elections in said precincts shall be appointed, to be under the same regulations, and receive the same compensation as the law directs in similar cases. Officers to be appointed, &c.

Sec. 5. *Be it further enacted*, That the sheriffs attending the elections at the Gallatin court-house and the said precinct, shall meet at the Gallatin court-house, on the Friday next after each election, and there compare the polls of the several candidates, and give certificates conformably thereto. Sheriffs to compare polls.

This act shall commence and be in force from and after the passage thereof.

#### CHAPTER CXIV.

*An ACT to amend an act entitled "an act providing for the payment of the Debt due the Commonwealth for the sale of vacant Lands," approved December 27, 1806.*

Approved January 15, 1810.

The act here referred to will be found in Vol. III, page 385.

WHEREAS by the ninth section of an act of assembly, approved December 27, 1806, entitled "an act providing for the payment of the debt due this commonwealth for the sale of vacant lands," the rights of certain infants involved in said act, are humanely provided for and protected, Recitat.

*Be it therefore enacted by the general assembly*, That wherever any person or persons may have or may hereafter obtain title to any tract of land by regular assignment from any person or persons who originally took up said land, and whose infant children might and would be entitled to the benefit and privileges under said section above alluded to (had not the same been assigned) in all such cases such assignee of such title, who shall have resided thereon until his or her death, without having alienated the same, and his or her right to such Provisions of the recited act, in favor of the infant heirs of the 'taker up,' extended to such heirs of the assignee.

1809. land has descended or been devised to his or her children or grand children, who at such death of their ancestor or ancestors might have been or may be under the age of twenty-one years, such tract of land or lands shall not be exposed to sale according to the provisions of the act above alluded to, until after such infant or infants shall attain full age : *Provided*, an affidavit to the effect aforesaid be made by two credible witnesses, before one of the circuit courts of the state and be filed with the register before the sale ; and if any person shall swear falsely in such affidavit, he shall be deemed guilty of perjury.

Affidavit to be made.

Penalty for swearing falsely

This act to be in force from its passage.

#### CHAPTER CXV.

*An ACT concerning the extinguishment of the Indian claim to certain Lands within this Commonwealth.*

Approved January 15, 1810.

THE people of Kentucky, taking into view the Indian incumbrance (by a treaty with the United States) on the lands within this state below the Tennessee river, a large portion of which had been, by the state of Virginia, sold to officers and soldiers, and treasury warrant claimants, who are deprived of the use thereof, and taking into view the probable willingness of the Indians to extinguish the incumbrance ; and that the United States having funds, more than sufficient, arising from the sale of lands on the north-west side of the Ohio river, which were ceded by the state of Virginia, subsequent to her sales aforesaid ; and hoping that the United States were willing to procure the extinguishment aforesaid, passed a resolution in their general assembly, approved the 11th day of February 1809, in order to obtain the attention of the general government ; but it is presumed the executive of the United States hath not embraced the same views of the subject, and hath desired an agent to be appointed on the part of this state, to act in the contemplated treaty, thereby to render the state of Kentucky liable for the payment of the purchase money, and it being deemed necessary that the subject should be farther explained between this government and the United States government, and the treaty procured at the expence of the United States : therefore,



## XVIII. YEAR OF THE COMMONWEALTH.

109

Sec. 1. *Be it enacted by the general assembly,* That it shall be lawful for the executive of this state to open an explanatory correspondence with the government of the United States, for the purpose of procuring an extinguishment of the Indian claim to all the lands within the Indian boundary within this state, at the costs and charges of the United States.

1809.

Sec. 2. *And be it further enacted,* That it shall be lawful for the executive of this state, if he shall deem it necessary, to appoint an agent on the part of this state to attend at any treaty with the Indians, vested with all necessary powers, except that of rendering this commonwealth in any wise liable for the payment of money.

Sec. 3. The said agent, if appointed, shall, for the time he shall be in actual service, receive a sum not exceeding five dollars per day, which account being liquidated and certified by the governor, shall be audited and paid out of the public treasury.

This act shall be in force from and after its passage.

### CHAPTER CXVI.

*An ACT to amend the several acts concerning the Turnpike and Wilderness Road.*

Approved January 15, 1810.

Sec. 1. *BE it enacted by the general assembly,* That hereafter the keeper of the turnpike shall not demand or receive of any citizen of Knox county, any toll for themselves or property passing the gate, any law to the contrary notwithstanding.

Sec. 2. *Be it further enacted,* That no road shall be opened, by order of court, whereby any person can avoid going through the turnpike, and all such roads, which may have been ordered to be opened, shall be hereby deemed null and void; and no person shall be bound to work thereon, either in opening or keeping the same in repair.

This act to be in force from its passage.

### CHAPTER CXVII.

*An ACT to repeal the third section of an act to amend an act concerning Georgetown, and for other purposes.*

Approved January 15, 1810.

The section here repealed will be found in Vol. III, page 197.

Sec. 1. *BE it enacted by the general assembly,* That the third section of an act to amend an act entitled "an

1809. act concerning Georgetown," approved December the 15th, 1804; be and the same is hereby repealed.

Sec. 2. *And be it further enacted,* That it shall be lawful for the county court of Scott to rent out for the best price they can get, the lower story of the court-house in Georgetown; and it shall be lawful, should said court conceive it of public utility or advantage, to appropriate so much of the rents aforesaid as shall be necessary for sinking, walling up and completing a well which is begun on the public square in Georgetown; and all monies arising out of the rents aforesaid, and not appropriated as aforesaid, shall go towards lessening the county levy. All acts contravening the provisions of this act, shall be and the same are hereby repealed.

This act shall be in force from its passage.

#### CHAPTER CXVIII.

*An ACT for the relief of Young Ewing.*

Approved January 18, 1810.

The relief was against the effects of a mistaken payment on a wrong certificate for head-right land.

#### CHAPTER CXIX.

*An ACT for the formation of a new County out of the Counties of Logan and Ohio.*

Approved January 18, 1810.

Boundaries.

Sec. 1. *BE it enacted by the general assembly,* That from and after the first day of May next all that part of the counties of Logan and Ohio, included within the following bounds, to wit: Beginning at the old Buffaloe ford on Gasper's river, where the division line between the counties of Logan and Warren crosses the said river, thence a direct line to a point that is fifteen miles due north from the court-house in Russellville, thence, due west to the Muhlenburg line between the counties of Muhlenburg and Logan, and with said line to the mouth of Muddy river, thence across Green river a direct line to the top of the dividing ridge between the head of Thompson's fork of Indian Camp creek and Cany creek, thence to where the state road intersects the head of Welch's creek, thence a direct line to the mouth of Bear creek, thence down Green river to where the dividing

line between the counties of Logan and Warren strikes Green river, thence with said dividing line to the beginning, shall be one distinct county, called and known by the name of Butler. 1809.

Sec. 2. After said division shall take place, the courts for said county shall be held on the second Monday of every month, except the months in which the circuit courts are held, which circuit courts shall be held on the second Mondays in May, August and November in every year, and may continue six days each term, if necessary, in such manner as is provided by law in respect to other circuits. Name.  
Courts, when to be held.

Sec. 3. The justices of the peace for said county of Butler shall meet at the house of John Tyler on the first court day after the said division shall take place, and after having taken the oaths required by the constitution of the United States and this state, and the sheriff being qualified according to law, shall proceed to appoint and qualify a clerk; which several oaths may be administered by either of the justices in the commission of the peace, and by him to the rest of the court. Justices thereof when & where to meet.

Sec. 4. It shall be lawful for the sheriffs of the counties of Logan and Ohio to collect all officers' fees, revenue taxes, county levy, fines, forfeitures and executions, in the manner prescribed by law, which remains in their hands uncollected in that part taken from their respective counties, and within the bounds of the said county of Butler, and account for the same as if the said county of Butler had not taken place. Power of certain officers.

Sec. 5. The courts of Logan and Ohio shall have jurisdiction in all matters in law or equity that shall be depending before them at the time of the passage of this act, and shall try and determine the same, issue process and award executions thereon. Jurisdiction of Logan and Ohio courts.

Sec. 6. *Be it further enacted*, That the act establishing an election precinct in the county of Logan, shall be and the same is hereby repealed, and that the county court and sheriff of the county of Butler shall be governed by the same laws and regulations as other counties and sheriffs are, relative to elections; and the sheriff of the county of Butler and the sheriff of the county of Logan, shall, on the Saturday next after the election, meet at the court-house of the county of Logan, to compare the polls and ascertain the person or persons duly elec- Regulations as to elections in said county.

1809.

ted, and in making out the certificate of the same both sheriffs shall fix their signature thereto: *Provided however*, that part of the county of Butler taken from the county of Ohio, shall compose an election precinct, and that the election shall be held at the house of Robert Cooper, and be governed by the same rules and regulations in their elections as other election precincts are, and that the sheriff of Butler county, or his deputy, and the sheriff of Ohio county shall meet at the court-house of Ohio county on the Saturday next after the election, to compare the polls and ascertain the person or persons duly elected, and in making out the certificate of the same both sheriffs shall sign such certificate.

Justices and assistant judges to fix the permanent seat of justice.

Sec. 7. *Be it enacted by the general assembly*, That the justices of the peace and assistant judges for said county shall meet at the place of holding court in the said county of Butler on the second Monday in June next, and a majority of said justices being present, they shall then proceed to fix the permanent seat of justice for said county of Butler on the bank of Green river, or so near the river as the situation of the ground will admit, and so soon as the court-house and jail shall be built at the place fixed on in said county of Butler for the permanent seat of justice, the county court shall certify the same to the circuit court, and the circuit and county court shall adjourn and hold their respective courts at the place so fixed on as the permanent seat of justice.

A majority of justices in commission to concur in the appointment of a clerk.

Sec. 8. In the appointment of a clerk to the county court of the county of Butler, it shall be necessary that a majority of all the justices of the peace commissioned in and for said county shall concur in such appointment.

Attached to the 7th district.

Sec. 9. *Be it further enacted*, That said county of Butler shall be added to and compose a part of the seventh district, and that the circuit judge presiding in the several circuit courts in the seventh district shall attend and preside in the circuit courts held in the said county of Butler.

Certain inhabitants exempted from ferriage tolls.

Sec. 10. *And be it further enacted*, That all the inhabitants on the opposite side of Green river from that on which the court-house shall be fixed, shall be privileged on their several court and election days, to pass the river at any ferry within said county free from paying toll or ferriage fee for the same.

This act shall commence and be in force from and after the first day of May next.

1809.

CHAPTER CXX.

*An ACT establishing certain Academies, and for other purposes.*

Approved January 18, 1810.

Sec. 1. *BE it enacted by the general assembly, That* Charles F. Wing, Claiborne Rice, David Campbell, William Campbell, Jeremiah Langby, Jesse Reno, Al-<sup>Greenville aca-</sup>  
ney M'Clean, John C. Russell and James Weare, gen-<sup>demy.</sup>  
tlemen, shall be and are hereby constituted a body poli-  
tic and corporate; to be known by the name of the trus-  
tees of Greenville Academy, and by that name shall  
have perpetual succession and a common seal, with pow-  
er to change or alter the same at their pleasure; and as a  
body corporate, shall be authorised to exercise all the  
powers and privileges that are now enjoyed by the trus-<sup>Powers of the</sup>  
tees of any academy or seminary of learning in this  
state; and on the death, resignation or other disqualifi-<sup>trustees.</sup>  
cation of any of the trustees aforesaid, or their succes-  
sors, a majority of the remaining trustees shall fill such  
vacancy, and the person so appointed shall be vested  
with the same power and authority as if specially na-  
med by this act; and by the name and style of the trus-<sup>Their style.</sup>  
tees of the Greenville Academy, may sue or be sued,  
plead or be impleaded, in any court in law or equity,  
or before any tribunal having cognizance of the same.

Sec. 2. The said trustees and their successors shall  
have full power and authority in their corporate capa-<sup>May receive</sup>  
city to purchase or receive by donation any lands, tene-<sup>lands by dona-</sup>  
ments, hereditaments, monies, rents, goods and chattels,  
and to hold the same by the name aforesaid, to them and  
their successors forever; and to hold or dispose of the  
same for the use and benefit of said academy; and to  
sell and dispose of the lands which are now held for the  
benefit of said academy, or any part thereof for the pur-<sup>And dispose of</sup>  
pose of building a house and purchasing books, &c. for  
the use and benefit of said institution. <sup>the same.</sup>

Sec. 3. The said trustees or the first person named  
herein, shall notify the time and place of the first meet-<sup>Meeting of the</sup>  
ing of the trustees, and on the attendance of a majority  
thereof, they shall appoint a chairman and clerk; and  
<sup>trustees.</sup>

1809. *May ordain by-laws.* thereafter a meeting of the trustees may be called by the chairman or any two of the trustees. The said trustees shall have power to adjourn from day to day, to make and ordain by-laws, rules and ordinances as they may think proper, not inconsistent with the laws of this commonwealth; and moreover, to fix on a proper place for erecting the buildings for the said academy. A majority of the said trustees shall have power to engage and employ a competent number of masters and professors to said academy, to fix their salaries and terms of tuition; and on the misconduct of any master, professor or student, may dismiss or expel such master, professor or student from the said academy.

*Liberty academy.* Sec. 4. *Be it further enacted,* That Moses Rice, John Depau, Archibald Northcut, Job Sweney, William Scott, John Campbell and James Swegit, are hereby appointed trustees of Liberty academy, in the county of Casey, with the same powers and subject to the same restrictions and regulations which are applicable to similar bodies under the laws of this commonwealth. *Power & duties of the trustees.* And the said trustees, or a majority of them and their successors concurring, shall have power to fill any vacancy which may happen in their body. They shall cause to be entered and surveyed, six thousand acres of any vacant and unappropriated land in this state, except the lands acquired by the treaty of Tellico; and they may, if they deem it proper, give and sell one half of the land allowed to said academy, for the purpose of having the said land entered, surveyed and patented, and for building a school-house and purchasing books for the use and benefit of the said academy, a majority of the whole number concurring therein. They may meet at such time and places as they think proper, and, two thirds of the whole number concurring, they may expel a member.

*Rockcastle academy.* Sec. 5. *Be it further enacted,* That James Dysert, William Carson, William Smith, Absolem Rentfro, John Burdett, Henry P. Buford and John Dysert, are hereby appointed trustees of the academy in the county of Rockcastle, with the same powers and subject to the same restrictions and regulations, in every respect, as those in the above section in the county of Casey.

This act shall be in force from and after its passage.

## CHAPTER CXXI.

1809.

*An ACT to keep open and improve the Navigation of certain Water Courses.*

Approved January 18, 1810.

Sec. 1. *BE it enacted by the general assembly, That* <sup>Mud river.</sup> James Duncan, Presley Morehead, Peter Hansberry, John Browning and Urbin Ewing, be and they are hereby appointed commissioners, to open and keep in repair the navigation of Mud river, from the junction of the Wolf lick fork to its junction with Green river; and they are hereby empowered to raise by subscription the <sup>Power of com-</sup> sum of two thousand dollars, either in money, property <sup>missioners.</sup> or labor, for the purpose aforesaid. And the said commissioners, or a majority of them, are hereby authorised <sup>Their duty.</sup> to cause all obstructions to the navigation of said stream to be removed, and to cut down all timber projecting over said stream, shrub all points of islands, remove all fish-dams or logs, rocks and shoals: *Provided however,* nothing herein contained shall be so construed as to affect any mill or mills which may be, before the passage of this act, erected on said stream. And the said commissioners, or a majority of them, as soon as they shall raise a sufficient sum for the purpose aforesaid, proceed to employ and superintend the clearing out said stream agreeably to the provisions of this act: *Provided, however,* that the said commissioners, before they proceed to clear out said stream, shall, in the county court of Logan, enter into bond with security, to be approved of by said court, in the sum of four thousand dollars, conditioned to appropriate the money, property and labor to the removing the obstructions in said stream, in pursuance of the directions of this act; and the said commissioners shall receive compensation for their services in <sup>Their pay.</sup> proportion to the time they or either of them may serve, out of the subscriptions to be raised by this act, not exceeding one dollar per day each.

Sec. 2. *And be it further enacted, That* <sup>Titheables to</sup> the county court may direct the titheables who are liable to work on <sup>work on said</sup> public roads, and who live on or near said stream, to <sup>stream.</sup> work four days every year after the said stream is opened, in removing or cutting away any obstructions that maybe in said stream; and the titheables that may be so directed to work, shall be exempted from working on the public roads in said county of Logan.

1809.

Big Barren river.

Power of commissioners.

Their duty.

Their pay.

Titheables to work on said stream.

Rough creek.

Sec. 3. *Be it enacted by the general assembly, That* Jacob Skiles, Alexander Graham, George G. Minor, Thomas Starrat and Benjamin Lawless, be and they are hereby appointed commissioners, to open and keep in repair the navigation of Big Barren river, from the mouth of Bay's fork to the junction of said river with Green river; and they are hereby empowered to raise by subscription the sum of two thousand dollars, either in money, property or labor, for the purpose aforesaid; and the said commissioners, or a majority of them, are hereby authorised to cause all obstructions to the navigation of said stream to be removed, and to cut down all timber projecting over said stream, shrub all points of islands, remove all fish-dams or logs and rocks; and the said commissioners, or a majority of them, as soon as they shall raise a sufficient sum for the purpose aforesaid, may proceed to employ hands and superintend the clearing out said stream, agreeably to the provisions of this act: *Provided however*, that the said commissioners, before they proceed to clear out said stream, shall, in the county court of Warren, enter into bond with security, to be approved of by the said court, in the sum of three thousand dollars, conditioned to appropriate the money, property and labor to the removing the obstructions in said stream in pursuance of the directions of this act; and the said commissioners shall receive compensation for their services in proportion to the time they or either of them may serve, out of the subscriptions to be raised by this act, not exceeding one dollar per day each, for each day which they may actually serve in clearing out said stream.

Sec. 4. *And be it further enacted, That* the county court of Warren may direct the titheables who are liable to work on public roads, and who live or may live within two miles of said stream, on either side, to work four days every year, if necessary, in removing and cutting away any obstructions that may be in said stream; and the titheables that may be directed to work, shall be exempted from working on any public road in said county of Warren, for the term of time he may be thus liable to work on said river.

Sec. 5. *And be it further enacted, That* Rough creek shall be kept open and considered as a navigable stream, from its mouth to Long's ferry.



Sec. 6. *And be it further enacted*, That from and after the passage of this act, Pond river, as a navigable stream, shall remain open and unobstructed for the purpose of navigation, from its mouth up within one half mile of the mouth of Briar creek; and any person erecting or causing to be erected any fish-dams, bridges or other obstructions to the passage of boats up or down said stream, shall, for every such offence, forfeit and pay the sum of five dollars, recoverable before a justice of the peace, for every twenty-four hours such obstruction shall remain therein.

1809.

Pond river.

Penalty on persons placing obstructions.

This act shall be in force from its passage.

#### CHAPTER CXXII.

*An ACT regulating the laying the Levy in certain Counties.*

Approved January 18, 1810.

WHEREAS it is represented to the general assembly, that a majority of the justices for the counties of Wayne and Pendleton failed to attend at their November court last past, to lay their county levy: for remedy whereof,

Sec. 1. *Be it enacted by the general assembly*, That the justices of the peace for the county of Wayne and Pendleton, a majority of them being present and concurring therein may at their January or February terms next, proceed to lay their levy, as fully as they could or ought to have done at the time required by law.

Sec. 2. *Be it further enacted*, That the proceedings of the court of Hopkins county, at their December term 1808, so far as relates to laying their county levy, shall be as valid as though they had laid the said levy at the regular term for that purpose, in the preceding November, any law to the contrary notwithstanding.

This act shall commence from its passage.

#### CHAPTER CXXIII.

*An ACT to extend the time for and further to regulate the Debt due the Commonwealth for the sale of vacant Lands.*

Approved January 18, 1810.

The act here referred to is Chap. 26, of this Volume.

Sec. 1. *BE it enacted by the general assembly*, That the sales of land directed to be made by the register of Sales suspended

1809. the land-office, under the act of assembly passed the 26th day of January last, suspending the sales of said lands, shall be and the same is hereby suspended until the first day of June 1811, and the auditor shall perform the duties required under the before recited act against the first Monday in June 1811.

When sales to commence. Sec. 2. *And be it further enacted*, That the register shall, on the first Monday in June 1811, proceed to make sale of the lands upon which any instalment and interest at that time may be due and unpaid, in the same way as he would have been bound to do on the first Monday in June next.

Instalments, when payable, and how. Sec. 3. *Be it further enacted*, That the instalments which by the existing law would become due on the first Monday in June next, shall be payable on the first Monday in June 1811, and each other instalment shall be payable annually on the first Monday in June in each year thereafter, till the whole is paid: *Provided however*, legal interest shall be paid on the whole amount of the instalment, at the time of paying each several instalment, as heretofore.

Interest may be discounted, and how. Sec. 4. *And be it further enacted*, That every person indebted to this state for any land acquired under any law of this commonwealth, who shall pay into the public treasury within twelve months from the passage of this act the whole amount of the state price, or the balance becoming due, part being already paid for said land, shall be entitled to a discount of the interest due and to become due thereon.

How land may be redeemed. Sec. 5. *And be it further enacted*, That where any tract of head-right land shall have been struck off to the state at either of the sales, that the owner or owners of the said claim shall have the privilege of redeeming the said claim on or before the first Monday in June 1811, by paying into the public treasury the whole amount of the principal due on the said claim, together with the costs of sale and redemption, and shall be entitled to a discount of the interest due and to become due thereon.

This act shall commence and be in force from and after its passage.

CHAPTER CXXIV.

1809.

*An ACT allowing an additional number of Justices of the Peace in certain Towns and Counties.*

Approved January 18, 1810.

*BE it enacted by the general assembly,* That the town of Richmond shall be entitled to one justice of the peace, in addition to the number now allowed by law, who shall reside within the limits of the said town; and the county of Nelson three in addition to the number now allowed by law, one of whom shall reside in Bardstown; the county of Ohio two in addition to the number now allowed by law; the county of Muhlenberg two in addition to the number now allowed by law; the county of Barren two in addition to the number now allowed by law; the county of Christian two in addition to the number now allowed by law; the county of Knox three in addition to the number now allowed by law; the county of Cumberland two in addition to the number now allowed by law; the county of Clay two in addition to the number now allowed by law; the county of Breckenridge two in addition to the number now allowed by law; the county of Casey two in addition to the number now allowed by law; the county of Pulaski two in addition to the number now allowed by law; the county of Adair one in addition to the number now allowed by law; the county of Harrison three in addition to the number now allowed by law; and the county of Clarke two in addition to the number now allowed by law.

This act shall commence and be in force from and after the passage thereof.

CHAPTER CXXV.

*An ACT for the better regulating the Town of Monticello, in the County of Wayne.*

Approved January 18, 1810.

WHEREAS it is represented to the present general assembly that there has been no special law passed heretofore for the regulation of the town of Monticello in the county Wayne, and that it is necessary some special law be passed for that purpose:

Preamble.

Sec. 1. *Be it therefore enacted by the general assembly,* That the free male inhabitants of the town of Mon-

Trustees to be appointed, and their powers.

1809.

Monticello who shall possess the qualifications hereafter mentioned, are hereby authorised and required to meet at the court-house in the said town of Monticello, on the second Saturday in March, in the year one thousand eight hundred and ten, and on the same in every two years thereafter, and shall elect five trustees for said town, which said trustees so elected, or a majority thereof shall be sufficient to form a board, and shall be authorised to make any by-laws for the government and regulation of said town as to them may seem right, not inconsistent with the constitution and laws of this commonwealth.

To impose taxes.

Sec. 2. *Be it further enacted*, That the said trustees or a majority of them shall have full power and authority to impose a tax annually, on the real and personal property subject by law to taxation, within the limits of said town, not exceeding forty dollars per annum, as to them shall seem right, for keeping in repair the public streets, spring, &c. of said town, or for any other purpose which said trustees, or a majority of them shall think proper for the benefit of said town.

Appoint officers and inflict penalties.

Sec. 3. *Be it further enacted*, That the said trustees shall appoint their clerk, and any other officer they may think proper; and the said trustees shall have full power, or a majority of them, to inflict a fine not exceeding ten dollars for every breach of their by-laws, to be sued for and recovered in their name, before any justice of the peace, and applied to the use of said town.

Qualification of trustees.

Sec. 4. *And be it further enacted*, That no person shall be elected a trustee of said town, or qualified to act as such, unless he resides within the limits of said town, or owns real estate therein, and be above the age of twenty-five years.

Qualification of voters.

Sec. 5. *And be it further enacted*, That no person shall be qualified to vote at the general election for trustees for said town, unless they reside in said town or own real estate therein, and be above the age of eighteen years.

Commissioner to be appointed his duty & pay.

Sec. 6. *And be it further enacted*, That the board of trustees for said town may at any time they may think proper, appoint some fit person, who shall reside in said town, as a commissioner for the purpose of obtaining, in such manner as the board may think proper, a list of all such property as may be subject to taxation by this act,

in said town, whose duty it shall be to proceed to obtain such lists, and shall return the same to the said board, in such time and in such manner as the board may direct, for the purpose of enabling said trustees to apportion the tax on said town. The said commissioner shall be allowed such sum per day as the said trustees may deem right, to be paid out of the money to be collected as taxes.

1809.

Sec. 7. *And be it further enacted*, That after the said trustees have laid and apportioned the taxes under this act, they shall appoint a collector thereof, whose duty it shall be to collect and account for the same to the trustees, within two months after he shall have been furnished with a list of said taxes; and if any person shall refuse or fail to pay the same, the said collector shall make distress and sale of property, in the same manner as collectors of revenue taxes are directed to do; and the said collector shall pay the money so collected to the trustees of said town; and the said collector shall be allowed six per cent. on all monies which he shall have to distrain for, and such compensation for the collection of other taxes as the said trustees may think proper, to be paid out of said taxes.

Collector, his  
duty and pay.

Sec. 8. *And be it further enacted*, That the collector shall give bond with security to the said trustees for the due performance of his duty.

To give bond.

Sec. 9. *And be it further enacted*, That in case the said collector shall fail to pay the money collected by him, to the trustees as aforesaid, they may, upon giving him ten days previous notice in writing, recover judgment against the said collector and his security, in the county court of Wayne county, by motion.

How to recover  
against collect-  
or.

Sec. 10. *And be it further enacted*, That in case a vacancy shall happen in the said board of trustees, by death, resignation or otherwise, between the general election for trustees for said town, the remaining trustees, or a majority of them, shall meet at the court-house in said town, as soon as convenient, and supply such vacancy; which said trustee or trustees so appointed shall possess the same power and qualifications as that at the general election, and shall continue in office until the next general election for trustees, and no longer.

Vacancies, how  
filled.

Sec. 11. *And be it further enacted*, That the said trustees, after they are elected, shall meet at the court-house in the said town on the third Saturday in March, June,

Time of meet-  
ing.

1809.

September and December, annually, and at such other time as they may think proper, in every year, as the internal policy of said town may require ; and the trustees elected in pursuance of this act shall continue for and during the term of two years from the time of their election.

Clerk, how paid

Sec. 12. *And be it further enacted,* That the said trustees, at some one of their meetings in every year, shall make such allowance to their clerk as they may think proper, to be paid out of any money collected in pursuance of this act.

Clerk's oath.

Sec. 13. *And be it further enacted,* That the said clerk shall take an oath, before he enters upon the duties of his office, to carefully keep and preserve the books and all other papers confided to him by said trustees, and to make true and correct entries of all by-laws passed by said trustees ; which said oath shall be administered by the president of said board.

Trustees may be fined.

Sec. 14. *And be it further enacted,* That every trustee who shall fail to attend said meetings, without a reasonable excuse, shall forfeit and pay for such failure, two dollars, to be applied to the use of said town, which said excuse shall be adjudged of by the remainder of the trustees, or a majority of them ; and in case a fine should be imposed, and the said trustees shall fail or refuse to pay it to the collector, when demanded, it shall and may be lawful for the remaining trustees to sue for and recover the same before a justice of the peace.

Trustees' oath.

Sec. 15. *And be it further enacted,* That the said trustees shall severally take an oath before they enter upon the duties of their office, well and truly to perform the duties enjoined on them as trustees ; which said oath shall be administered to them by a justice of the peace and recorded by the clerk of said trustees.

First election, how held.

Sec. 16. *And be it further enacted,* That the first election shall be held by some two justices of the peace of Wayne county ; which said justices shall be nominated by the county court of said county ; and every other general election shall be held in like manner.

Regulation in case of no election.

Sec. 17. *And be it further enacted,* That in case the said qualified voters or justices shall fail to meet, as aforesaid, after the first general election, the former trustees shall continue in office until the next general election be held for trustees.

This act shall commence and be in force from and after the passage thereof.

1809.

## CHAPTER CXXVI.

*An ACT for the benefit of the Woodford Academy.*

Approved January 18, 1810.

*BE it enacted by the general assembly,* That so much of the north end of the west street in the town of Versailles as may lie between the lots of ground belonging to or are now vested in the trustees of the Woodford academy, and included by a line drawn across the street, and to connect the two most southwardly corners, binding thereon, shall be and hereby is vested in the trustees of the said academy, for the use and benefit of the said institution; and over which the said trustees shall exercise every jurisdiction, as in the case of other lots of ground belonging to said academy, any law to the contrary notwithstanding.

This act shall be in force from its passage.

## CHAPTER CXXVII.

*An ACT concerning the Bonds of certain Officers, Guardians, Administrators and Executors.*

Approved January 23, 1810.

Sec. 1. *BE it enacted by the general assembly,* That all bonds of a kind heretofore made payable to the commonwealth, or to the governor, shall hereafter be made payable to the commonwealth of Kentucky, and suits thereon shall be in the name of the commonwealth, and may be for the use of the commonwealth, or for the benefit (as the case may be) of any person or persons deeming himself, herself or themselves injured by a breach of the condition of any such bond, who may, at his, her or their proper costs and charge, put the same in suit; and an action or judgment, in one case on such bond, shall in no wise abate or bar a suit thereon for another cause, unless the whole penalty shall have been recovered of the securities.

Bonds made payable to the commonwealth

Who may sue thereon.

Suit not to abate in certain cases.

Sec. 2. *And be it further enacted,* That every clerk of a court of this commonwealth shall within the present year 1810, and within every fifth year thereafter, with

Clerks to give bonds & when.

1809. **Penalty.** two or more sufficient securities, to be approved of by the court of which he is clerk, execute a bond, in the penalty of ten thousand dollars, with condition for the true and faithful discharge of the duties of his said office; which bond shall be recorded in the order book of the court of that day, and within the same year transmitted by said clerk to the clerk of the court of appeals, to be by him registered and preserved among the papers of the court (except that the clerk of the court of appeals shall transmit his bond in like manner to the clerk of the general court, to be by him in like manner registered and preserved); each of which bonds shall be in force to secure against every misconduct of the clerk while in office, or until another bond shall be duly executed, recorded and transmitted to the clerk of the court of appeals, or general court, as the case may be, according to the provisions of this act.

**To be recorded and transmitted to the clerk of the court of appeals.** Sec. 3. *And be it further enacted,* That the register of the land-office, and all other state officers, (not otherwise specially provided for by this act) the tenure of whose office is during good behavior, and who by law are required to give bond and security for the faithful discharge of the duties of their respective offices, shall, within the present year 1810, and within every fifth year thereafter, with two or more securities, to be approved of by the governor then in office, execute a bond with the like penalty and condition, as by the law for the time being shall be requisite in each case respectively; which bond shall be forthwith filed in the office of the secretary, and by him registered and preserved.

**State officers to give bond.** Sec. 4. *And be it further enacted,* That coroners and county surveyors, and all other county officers, not otherwise specially provided for by this act, the tenure of whose office is during good behavior, and who by law are required to give bond and security for the faithful discharge of the duties of their respective offices, shall, within the present year 1810, and within every fifth year thereafter, in the county court of their respective counties, with two or more sufficient securities to be approved of by the court, enter into bond with the like penalty and condition, as by the law for the time being shall be requisite in each case respectively; which bond shall be by the clerk registered and preserved in his office with the papers of the court.

**County officers to give bond.**  
**To be recorded by the clerk,**



XVIII. YEAR OF THE COMMONWEALTH.

125

Sec. 5. The bonds alluded to in the third and fourth sections of this act, shall be in force against all misconduct of the officer while in office, or until another bond shall be executed according to the provisions of this act.

1809.

Force of said bonds.

Sec. 6. *And be it further enacted*, That if any person shall hereafter be appointed to any of the offices aforesaid, or to any office now in being, or which shall hereafter be created, the tenor of which shall be during good behavior, and to which the law shall also attach the requisition of an office bond and security; or if any person now holdeth any office to which the qualities aforesaid shall be hereafter attached by law, every of such persons, in giving the first office bond, shall conform to the directions of this act, so far as they shall apply, and shall thereafter give new bond and security, in like manner and within the stated periodical years herein before provided for other the like officers, notwithstanding there may not be five years between the time of giving the first and second bonds.

Provision for officers or offices hereafter created.

Sec. 7. *And be it further enacted*, That every clerk or other officer within the purview of this act, who shall fail to keep and perform the foregoing requisitions hereof, so far as they apply to such officer, shall be guilty of a misdemeanor and be removable from office therefor.

Penalty for failure to give bond.

Sec. 8. *And be it further enacted*, That the bonds of guardians, of executors, and of administrators, and others who by law are required to execute a bond to the county court justices, shall be made payable to the commonwealth of Kentucky, instead of the justices, and may be proceeded on as heretofore, except that suits thereon shall be in the name of the commonwealth, instead of the justices; and an action in one case on such bond, shall in no wise abate or bar an action thereon for another cause.

Bonds of guardians, &c. to be payable to the commonwealth

Sec. 9. *Provided, however*, That nothing in this act contained shall be so construed as to make void any bond taken in such way and form as would be valid in law if this act had not been passed, nor to change the style of the action on any such bond; but this provision, so far as it relates to officers, shall not protect an officer from removal from office who shall fail to give the bond in strict conformity to the requisitions aforesaid.

Provide.

1809. Sec. 10. The securities of any of the officers aforesaid, bound by any bond heretofore given, shall not be liable for any misconduct of the officer which shall take place after the new bond shall be duly executed and deposited according to the true intent and meaning of this act.

Securities re-  
leased upon re-  
newal of bonds.

#### CHAPTER CXXVIII.

*An ACT to alter the time of holding a Term of Henry Circuit Court.*

Approved January 23, 1810.

The alteration was, from the first Monday in March to the first Monday in April.

#### CHAPTER CXXIX.

*An ACT authorising the Editors of the Examiner, to insert certain Advertisements.*

Approved January 23, 1810.

*BE it enacted by the general assembly,* That it shall and may be lawful for any advertisements which are required by law to be published in a newspaper to be inserted in the Examiner, printed in Lancaster, Kentucky, and the editor or editors of said paper shall be entitled to the same fees and be governed by the like regulations as other printers in this commonwealth: *Provided,* That nothing herein contained shall be so construed as to authorise the insertion in the Examiner of such advertisements as are particularly required by law to be published in the paper of the public printer.

This act shall be in force from and after its passage.

#### CHAPTER CXXX.

*An ACT to amend the several acts respecting the Town of Maysville, in the County of Mason.*

Approved January 23, 1810.

Recital.

WHEREAS it is represented to the general assembly that an act passed on the 16th of February 1808, entitled "an act concerning the town of Maysville, in the county of Mason," through mistake repealed the first section of an act entitled "an act concerning the town of Maysville," approved December the first, 1803, when in

fact it was intended to repeal an act entitled "an act concerning the town of Maysville in the county of Mason," passed December the 23d, 1805: for remedy whereof,

1809.

Sec. 1. *Be it enacted by the general assembly, That* the first section of the act entitled "an act concerning the town of Maysville," approved December the first, 1803, shall be and the same is hereby revived. A certain act revived.

Sec. 2. *Be it further enacted, That* the first section of the act entitled "an act to amend the act entitled an act concerning the town of Maysville in the county of Mason," approved December the 23d, 1805, shall be and the same is hereby repealed. A certain act repealed.

Sec. 3. *Be it further enacted, That* the surveyor or surveyors of the streets and roads leading from the said town of Maysville, shall be authorised to compel the titheables residing within one half mile of the limits of said town, to work on the streets and roads in and leading to the same, any law to the contrary notwithstanding. All acts and parts of acts coming within the purview of this act shall be and the same is hereby repealed. Power of the surveyor of the streets.

This act shall be in force from its passage.

#### CHAPTER CXXXI.

*An ACT making compensation to Edward Bradshaw, the Surveyor of Christian County.*

Approved January 23, 1810.

He had made out a connection of plats exhibited as evidence on the impeachment of William Rodgers. This act gave him a compensation of thirty dollars out of the treasury.

#### CHAPTER CXXXII.

*An ACT to establish an Academy in Greenup County.*

Approved January 23, 1810.

WHEREAS the justices of Greenup county court did, in pursuance of the act of the general assembly, entitled "an act to establish and endow certain academies," and the several acts amendatory thereto, engage the locating and surveying of 6000 acres of land for the use of the seminary of learning to be established in the said county, and that the quantity of four thousand six hundred acres, after satisfying the locator for his trouble and expense in securing the same, have been granted Preamble.

1809. in consequence of such locations and surveys, in the name of the Greenup seminary, and "to the justices of Greenup county for the use of a seminary," and it being adjudged expedient to vest the said lands in trustees for the purpose of establishing an academy in the said county: therefore,

Land vested in trustees. Sec. 1. *Be it enacted by the general assembly,* That the before recited 4600 acres of land, shall be vested in Francis Waring, sen. Jesse Boone, William Dupey, John Poage, and William Fugued, and their successors forever, in trust, who are hereby constituted a body politic and corporate, and known by the name of the trustees of the Greenup academy, and by that name shall have perpetual succession and a common seal, with power to change and alter their said seal at pleasure; and as a body corporate, shall be authorised to exercise all the powers and privileges that are now enjoyed by the trustees of any academy or seminary of learning within this commonwealth; and on the death, resignation or disqualification of any of the trustees aforesaid, or their successors, a majority of the remaining trustees shall fill such vacancy, and the person so appointed shall be vested with the same power and authority as if specially named by this act; and by the name of the Greenup academy may sue and implead, or be sued and impleaded in any court in law or equity, or before any tribunal having cognizance of the same in this state.

Trustees to receive donations and sell land. Sec. 2. The said trustees and their successors shall have power in their corporate capacity, to purchase or receive by donation any lands, tenements, hereditaments, monies, rents, goods and chattels, and to hold the same by the name aforesaid, to them and their successors forever, for the use of the said academy; and to sell, alien, or transfer any such lands, goods and chattels and apply the proceeds thereof to the use and benefit of the same; and may sell and dispose of fourteen hundred acres of land, herein before vested for the purpose of erecting the necessary buildings, and providing books and other apparatus for the use of the said academy.

Regulations for trustees. Sec. 3. The person first named herein, or in his absence or refusal to act, the next who will act, shall notify the time and place for the first meeting of the trustees, and on the attendance of a majority, they shall appoint a

chairman and clerk, who shall severally take an oath well and truly to execute the duties of their office ; and thereafter the board may be called by the chairman, or any two of the trustees. The said trustees shall have power to adjourn from day to day, to make and ordain such by-laws, rules and ordinances as they may deem proper, not inconsistent with the laws of this commonwealth ; and moreover to fix on a proper place for erecting the buildings for the said academy : *Provided*, that a majority of all the trustees shall be necessary to attend on making any contract, by-laws, or fixing the permanent seat for the same.

1809.

Sec. 4. A majority of the said trustees shall have power to engage and employ a competent number of masters and professors to the said academy ; to fix their salaries and the salary of their clerk, as also the terms of tuition ; and on the misconduct of any master, professor or student, may dismiss or expel such master, professor or student from the said academy.

Certain powers  
of trustees.

This act shall be in force from and after the passage thereof.

#### CHAPTER CXXXIII.

*An ACT for the erection of a new County out of the Counties of Hardin and Ohio.*

Approved January 25, 1810.

Sec. 1. *BE it enacted by the general assembly*, That from and after the first day of April next, all that part of the county of Hardin and Ohio, included in the following bounds, to wit : Beginning at the mouth of Bear creek, on Green river ; thence a straight line to where the state road first intersects a head branch of Welsh's creek ; thence a straight line to the top of the dividing ridge between the head of Thomas's fork and Indian camp creek and the waters of Caney creek ; thence a straight line to the mouth of Brown's creek ; thence up Rough creek to the mouth of Meeting creek ; thence up Meeting creek to the forks ; thence up the south fork to the head thereof ; thence a line to the mouth of Shaw's creek, so as to include Isaac Hynes ; thence down Nolin to the mouth ; thence down Green river to the beginning, shall be one distinct county, to be called and known by the name of Grayson.

Grayson county  
erected.

VOL. IV.

S

1809. **Sec. 2.** After said division shall take place, the court for the said county shall be held on the fourth Mondays of every month except the months in which the circuit courts are held; which circuit courts shall be held on the fourth Mondays in April, July and October in every year, and may continue six days each term, if necessary, in such manner as is provided by law in respect to other circuit courts.

**Sec. 3.** The justices of the peace for the said county of Grayson, shall meet at the house of John Bozerth, on the first court day after the said division shall take place, and after having taken the oaths required by the constitution of the United States and of this state, and the sheriff being duly qualified according to law, shall proceed to appoint and qualify a clerk; which several oaths may be administered by either of the justices in the commission of the peace, and by him to the rest of the court.

**Sec. 4.** A majority of the justices in the commission of the peace and the assistant judges of said county shall concur in fixing the permanent seat of justice for said county, having a due regard to the centre and other conveniences.

**Sec. 5.** It shall be lawful for the sheriffs of the counties of Hardin and Ohio to collect any officers' fees or public dues, in the manner prescribed by law, which shall remain unpaid after the time the said county takes place, within the bounds of the county of Grayson, and shall be accountable for the same in the same manner as if this law had not taken place.

**Sec. 6.** The courts of Hardin and Ohio shall have jurisdiction in all matters in law or equity that shall be depending before them at the time of the division, and shall try and determine the same, issue process and award execution thereon.

**Sec. 7.** *Be it further enacted,* That all that part of the county of Grayson taken from the county of Hardin, shall form one election precinct, the election therein to be held at the house of John Bozerth; and all that part of the county of Grayson taken from the county of Ohio, shall form one other election precinct, and the election therein to be held at the house of Stephen Cleaver; and that said election precincts shall be governed by the same rules and regulations as other election precincts.

are, and be attended by the sheriff of the county of Grayson or his deputy; and that the sheriff of the county of Hardin, and the sheriff of the county of Grayson, or his deputy, shall meet at the court-house in the county of Hardin, on the Saturday next after the election, to compare the polls; and that the sheriff of the county of Grayson shall meet at the court-house in the county of Ohio, on the Saturday next after the election, to compare the polls; and the several sheriffs, after comparing the polls and ascertaining the person or persons elected, the sheriffs shall give such person or persons so elected, a certificate signed by both sheriffs.

1809.

Sec. 8. *Be it further enacted*, That the law establishing the election precinct in that part of Ohio county included in the bounds of the county of Grayson, shall be and the same is hereby repealed.

Act forming a  
precinct in Ohio  
county repealed

Sec. 9. *Be it further enacted*, That the county of Grayson shall be added to and compose a part of the sixth district, and the circuit judge presiding in the several counties in said sixth district, shall attend and preside in the circuit courts held in the said county of Grayson.

Grayson county  
attached to the  
6th district.

This act shall be in force from and after the first day of April next.

#### CHAPTER CXXXIV.

*An ACT authorising a majority of the Justices in Henry County to lay an additional Levy.*

Approved January 25, 1810.

The additional levy was for the purpose of sinking a well on the public square.

#### CHAPTER CXXXV.

*An ACT allowing additional Terms to certain Circuit Courts.*

Approved January 25, 1810.

Sec. 1. *BE it enacted by the general assembly*, That the circuit court of Jefferson may and shall hold an additional term, to commence on the fourth Monday in July in every year, and continue eighteen juridical days, unless the business shall be sooner completed.

Jefferson.

Sec. 2. *Be it further enacted*, That no grand jury shall be summoned at the said July term, nor shall any

For the trial of  
chancery causes.

1809.

pleas of the commonwealth, or any action or motion at common law whatever, be tried; but the said term shall be and is hereby exclusively appropriated to the trial of cases and matters in chancery.

Efficacy of decrees and process made and issued at such terms. Sec. 3. *Be it further enacted*, That all decrees and orders, whether interlocutory or final, made at the said July term, shall be as valid as if made at any other term of said court; and that all process in chancery which may now be sued out and made returnable to any term of said court, or any day of such term, may be sued out and made returnable to the said July term, or any day thereof.

Not restricted hereby at its usual terms. Sec. 4. *Be it further enacted*, That nothing in this act shall be construed to prevent the trial of any cause in chancery, at any of the ordinary terms of said court, but that the same may be taken up and tried at any of said terms, as if this act had never passed.

Madison. Sec. 5. *Be it further enacted*, That the circuit court of Madison county shall hold three additional terms in each year, to commence on the last Mondays in February, May and August, and for each term to continue six juridical days, unless the business shall be sooner completed.

For the trial of chancery causes. Sec. 6. *Be it further enacted*, That no grand jury shall be summoned at the said additional terms, nor shall any pleas of the commonwealth, or any action or motion at common law whatever, be tried; but said additional terms shall be and are hereby exclusively appropriated to the trial of cases and matters in chancery.

Decrees and orders at any term thereof valid. Regulations as to process. Sec. 7. *Be it further enacted*, That all decrees and orders, whether interlocutory or final, made at the said additional terms, to commence on the last Mondays in February, May and August as aforesaid, shall be as valid as if made at any other term of said circuit court, and that all process in chancery which may now be sued out and made returnable to any term of said court, or to any day of such term, shall be and the same are hereby made returnable to the said February term, or any day thereof; and that all process in chancery hereafter to be sued out, may be made returnable to any one of said additional terms, or any day of either of said terms, according to the usual course of chancery.

Not restricted hereby at their usual terms. Sec. 8. *Be it further enacted*, That nothing in this act shall be construed to prevent the trial of any cause in



chancery at any of the ordinary terms of said court; but that the same may be taken up and tried at any of said terms, as if this act had never passed.

1809.

Sec. 9. *Be it enacted by the general assembly,* That the circuit court of Bourbon shall hereafter annually hold a term in addition to the term now required by law to be held; the said additional term shall commence on the second Monday in March in every year, and continue two weeks, if the business shall so long require.

Bourbon.

Sec. 10. *And be it further enacted,* That no grand jury shall be summoned to the said additional term, nor shall any pleas of the commonwealth or any suit or motion whatever, at common law, be heard or tried at such additional term, but the same shall be and is hereby appropriated exclusively to the trial of cases in chancery.

For the trial of  
chancery causes

Sec. 11. *Provided however,* That the several county courts, in the counties to which additional circuit court terms are given by this act, shall continue to hold their respective terms in the same months wherein the additional circuit court terms shall be holden by virtue of this act, any law to the contrary notwithstanding.

County court  
not affected.

#### CHAPTER CXXXVI.

##### *An ACT for the relief of Joseph Brooks.*

Approved January 25, 1810.

This act relieved him from a sale to the commonwealth of a tract of land to which he had an equitable title, and which had been sold as the land of a non-resident. He was prevented by unavoidable accident from redeeming it within the legal time.

#### CHAPTER CXXXVII.

##### *An ACT for the relief of Bernard Todd.*

Approved January 25, 1810.

WHEREAS Bernard Todd did in the year 1782, transmit to Walker Daniel a land-office treasury warrant for 23,692 acres of land, which warrant was assigned by the said Walker Daniel, to himself, who caused the same to be entered with the surveyor of Fayette county on the sixth day of January 1783, and on the twelfth of May 1784, had surveys executed thereon, and had the same properly recorded in the office aforesaid;

1809. { which plats and certificates aforesaid were returned to the register's office of Virginia, and caveats having been entered thereon, and the procuring of transfers thereof from the heirs of Walker Daniel to the said Todd having been unavoidably delayed, the said plats and certificates could not be returned to the register's office of this state, prior to the passage of the act entitled "an act to prevent the fraudulent appropriation of lands under color of treasury warrants:" and whereas by the death of the surveyor of Fayette county, the endorsement required by said recited act cannot be had: for remedy whereof,

*Be it enacted by the general assembly,* That the register of the land-office is hereby authorised and required, upon the fees being paid thereon, to receive and register the plats and certificates aforesaid, and issue grants thereon, any law to the contrary notwithstanding.

#### CHAPTER CXXXVIII.

*An ACT for the relief of John P. Thomas.*

Approved January 25, 1810.

The relief was against a mistake to his prejudice of about 60 dollars, made by the committee appointed to settle with him.

#### CHAPTER CXXXIX.

*An ACT to authorise John Carothers and others to appropriate certain vacant Lands.*

Approved January 25, 1810.

They were permitted to locate small quantities of land in the counties of Montgomery and Nelson, and to obtain grants therefor at the price of one dollar per acre.

#### CHAPTER CXL.

*An ACT to authorise certain Officers of Government to transmit and receive by Mail certain Papers, and to provide for paying the Postage out of the public Treasury.*

Approved January 25, 1810.

Auditor and adjutant-general Sec. 1. *BE it enacted by the general assembly,* That the auditor of public accounts and the adjutant-general be and they are hereby authorised, to transmit and receive

by mail any official papers, and charge the commonwealth with the postage they may have to pay thereon; and they and each of them may quarterly present to the governor a statement of their account of money paid for postage, stating the papers, books, &c. on which they have paid postage, and the amount on each; and if it shall appear to the governor that the items of such accounts, or any part of them, come within the provision of this act, he shall certify the same, or so much thereof as he shall deem proper, to the auditor of public accounts, who may thereupon issue his warrant to the treasurer for the amount so certified, whose duty it shall be to pay the same out of any money in the public treasury not otherwise appropriated.

1809.

may transmit by  
mail certain pa-  
pers, &c.

Postage therefor  
how paid.

Sec. 2. *Be it further enacted*, That it shall be the duty of the commissioners of the tax in the several counties within this commonwealth, to deliver their book (heretofore required to be delivered to the auditor of public accounts) under cover, and directed to the auditor of public accounts, in Frankfort, and also endorse thereon the number of sheets contained in such book, into some post-office, on or before the tenth day of August annually; and in case any commissioners' books be not received by the auditor on or before the first day of September in every year, he shall transmit information thereof to the clerk of the county court of the county wherein such failure may have taken place, and it shall be the duty of such clerk to transmit by mail, as soon as practicable, to the auditor, a true copy of the commissioner's book deposited in his office, which has so failed of being received; which book shall be used and considered as evidence on any motion against a sheriff or collector, in the same manner as the books forwarded by the commissioners might have been, if they had arrived or been delivered to the auditor as heretofore; and the clerk shall receive for his services in transcribing such book and putting it into the mail, the sum of one half cent for each line, composed of words and figures, contained in such book, to be paid out of the public treasury; and for a failure in any commissioner to comply with the requisition of this act, he shall be subject to the same penalties and procedures as commissioners were heretofore subject to, on failure to deliver their commissioner's book to the auditor of public accounts.

Duty of com-  
missioner, audi-  
tor and clerk  
respecting the  
commissioners'  
books.

1809. *Sec. 3. Be it further enacted,* That the auditor shall be allowed, on the certificate of the governor, as directed by the first section of this act, for any postage he may pay on any letters which he may send or receive by mail in pursuance of the requisites of this or any other act of this commonwealth. So much of any act requiring the commissioners to deliver their book to the auditor of public accounts, is hereby repealed.

*Auditor to be paid postage.*

*Allowance to commissioners repealed.*

This act shall commence and be in force from its passage.

### CHAPTER CXLI.

*An ACT declaring Acts of Assembly to be in force from the passage, unless otherwise expressed in the act.*

Approved January 25, 1810.

The section here repealed may be found in Vol. 11, page 208.

*Preamble.* WHEREAS an act of assembly exists, purporting that every act passed during any stated annual session, shall commence and be in force at the expiration of three months from its passage, unless in the act itself another day be particularly mentioned in the commencement thereof, which is deemed delusive and incompatible with the constitution: therefore,

*Repealing section.* *Sec. 1. Be it enacted by the general assembly,* That the second section of the act of assembly passed in December in the year 1798, for reforming certain rules of legal construction, and all other acts and parts of acts of like import, shall be and the same are hereby repealed.

*When acts to be in force.* *Sec. 2. And be it further enacted,* That every act of the general assembly hereafter passed, shall commence its operation, where the same is signed by the governor, from the time when the same is so signed, and where the act is passed, the objection or objections of the governor notwithstanding, from the time when the same upon re-consideration shall be approved of by the senate and house of representatives, unless in the act another time shall be expressed for the commencement of the operation thereof.

This act shall commence and be in force from and after the passage thereof.

## CHAPTER CXLII.

1809.

*An ACT providing for the publication of Hardin's Reports of the Decisions of the Court of Appeals.*

Had its effect.

Approved January 25, 1810.

## CHAPTER CXLIII.

*An ACT for the benefit of Joseph Barnett, and his associates.*

Approved January 25, 1810.

It authorised them to locate a quantity of land, limited to 2000 acres, at 20 dollars per 100 acres, contiguous to wherthey were digging for salt water, at Double Lick, on the Horfe Lick fork of Rockcastle, dividing the county of Clay from Madifon.

## CHAPTER CXLIV.

*An ACT to amend the Militia Law.*

Approved January 25, 1810.

Repealed—See Chap. 297, of this Volume.

## CHAPTER CXLV.

*An ACT to incorporate the Frankfort Bridge Company.*

Approved January 25, 1810.

WHEREAS it is represented to the general assembly, that an association hath been attempted for building a bridge across the Kentucky river, under existing laws, which have been found inadequate for the purpose, and that owing to the breadth of the stream an incorporated company can alone be equal to the task of forming a capital and erecting a bridge across the said river; and it appearing that such an enterprise, if successful, will facilitate the communication of a great portion of the citizens of this state with the seat of government, and will tend to improve the art of constructing bridges, and encourage their erection in other parts of the country where they would be useful :

Preamble.

Sec. 1. *Be it enacted by the general assembly,* That for the purpose of erecting a bridge across the Kentucky river, at Frankfort, it shall be lawful to raise by subscription, a stock not to exceed \$ 30,000, to be composed of shares of \$ 100 each.

Amount of the stock.

Sec. 2. *And be it further enacted,* That subscriptions towards constituting the said stock, shall be opened at

Subscriptions, where opened &amp; by whom.

Vol. IV.

T

1809.

Frankfort, under the direction of Thomas V. Loofbourrow and William Trigg, or either of them, for any amount not exceeding \$ 15,000, in which subscriptions due preference shall be given to those persons who have petitioned for this incorporation.

Incorporated.

Sec. 3. *And be it further enacted,* That the subscribers of the said stock, their legal representatives, successors and assigns, shall be and they are hereby constituted and made a body politic and corporate, to be called and known by the name of the Frankfort Bridge Company, and by that name may sue and be sued, implead and be impleaded, and do and suffer all acts, matters and things which a body corporate may lawfully do and suffer, and may have a common seal, and the same may break and alter at pleasure, and also ordain, establish and put in execution such by-laws, ordinances and regulations as to them shall seem necessary and convenient for the government and well-being of the said corporation, and for carrying into effect the object of their institution, not being contrary to the constitution and laws of this commonwealth; and generally to do and execute all and singular such acts, matters or things as to them shall or may appertain.

Meeting, when  
to be called and  
choose directors

Sec. 4. *And be it further enacted,* That when eighty or more shares shall have been subscribed, the said Thomas V. Loofbourrow and William Trigg, or either of them, shall call a meeting of the company, at which meeting, a majority of the company being present, they shall choose five directors, and transact any other business appertaining to the nature and object of the institution of the said company.

Powers of com.  
missioners when  
to cease.

Sec. 5. *And be it further enacted,* That after the first election of directors, the subscription of shares shall cease to be made with the said Thomas V. Loofbourrow and William Trigg, and afterwards, if necessary, shall be made in such way and to such amount as the company shall from time to time direct, either at their meeting or by powers vested in the directors by the company.

Annual meet-  
ings.

Sec. 6. *And be it further enacted,* That after the first meeting of the company, there shall be annually holden on the Tuesday next succeeding the first Monday in January, a meeting of the said company, for the purpose of choosing five directors, and for the transacting of any

other business appertaining to the nature and object of the institution of the said company.

1809.

Sec. 7. *And be it further enacted*, That a meeting of said company may at any time be called by a majority of the directors, or by one third of the number of the company, or by the proprietors of one third of the shares: *Provided*, that no called meeting of the company shall be legal or valid unless a quorum shall be formed, consisting of a majority of the members of said company, or of the proprietors of at least two thirds of the shares.

A meeting may be called by a majority.

Sec. 8. *And be it further enacted*, That in all meetings of the company, the votes shall be taken by shares, each share being entitled to one vote. Shareholders may appear and vote by proxy: *Provided*, the proxy be appointed by writing, and the writing be produced to the company.

Votes to be taken by shares, &c.

Sec. 9. *And be it further enacted*, That the directors shall continue in office until their successors are chosen or appointed; they shall have power to fill any vacancy that may happen in their own body, and may from time to time appoint one of their own body to preside; their powers and duties shall be prescribed by the company.

Directors, how long to continue in office.

Sec. 10. *And be it further enacted*, That the shares in the said company shall be considered personal, and not real estate, and shall be transferable by assignments in writing, to be executed, authenticated and registered as the said company may direct and prescribe in their by-laws.

Shares personal estate.

Sec. 11. *And be it further enacted*, That the amount of each share shall be paid in such instalments as the company, by themselves or their directors, may prescribe. If the instalment required on any share shall not be paid at the time prescribed, the directors shall have power, on giving two weeks notice by advertisement in one or more newspapers published in Frankfort, to sell by public auction all the right and interest of the holder or proprietor in such share; and if the share so disposed of shall sell for more than the amount of the instalment or instalments due upon it, the overplus shall be held by the company at the disposal of such delinquent proprietor.

Shares to be paid by instalments.

How sold.

Sec. 12. The said company are hereby authorised and empowered to erect and build, or cause to be erected

Bridge to be built and where

1809.

and built, over the Kentucky river, from the termination of St. Clair street, in the town of Frankfort, to the opposite bank, a good and sufficient bridge, adequate for the passage of travellers, carriages, horses and cattle: *Provided*, said bridge shall not contain more than one pier in the channel of the river, and which pier shall not be less than sixty feet high from its foundation.

Writ of ad quod  
damnum.

Sec. 13. The said company are further authorised and empowered, if to them it shall appear necessary, for the aforesaid purpose, to sue out from the county court of Franklin county, a writ or writs of *ad quod damnum*, for the purpose of condemning as much ground, on either or both sides of said river, as may be necessary to secure the abutments. Upon the execution of such writ or writs, the jurors shall view the ground requested to be condemned, and if in their opinion it shall be necessary and proper to condemn said ground, they shall say so by their inquest, and lay off and designate said ground, and shall assess the value thereof; which inquest shall be returned to the county court of Franklin, and recorded; upon which, if the said company pay unto the said court the value of the land so assessed by the jury, it shall vest the said land in the said company in fee simple: *Provided*, the ground so condemned shall not exceed one third of an acre on either side of the river; and upon the money being so paid into court, they shall cause said money to be paid to the person in possession of said ground as proprietor, upon his giving bond with approved security in a penalty at least double the amount of said money, conditioned to pay said money, with lawful interest thereon, to any person who might thereafter prove to have a better title for said ground.

Rates of toll.

Sec. 14. *And be it further enacted*, That as soon as the said bridge shall be completed, the said company shall be authorised to demand and receive, by their proper agents, servants or officers, the following tolls for passing the said bridge, to wit:

	CENTS.
For every person above seven years old,	6 1-4
For any horse, mare, colt or mule,	6 1-4
For any waggon,	50
For every cart,	37 1-2
For every riding carriage with four wheels,	50
For every riding carriage with two wheels,	37 1-2



	CENTS.	1809.
For every head of neat cattle, - - -	2	}
For every head of sheep, goats or hogs, -	1	
For every hogshead of tobacco, rolled or carried		
across, not being in a waggon or cart, -	25	
For every dray, sleigh or slide, -	25	

*Provided however*, that the following persons shall pass free of toll on the following occasions, to wit. all public messengers and expresses; the citizens of Franklin county, resident on the south side of the said river, on the first day of their circuit and county courts; the voters of said county, resident as aforesaid, on all days of elections in and for said county; the militia men of said county, resident as aforesaid, going to or from muster on days of muster. Exemption.

Sec. 15. The said company may acquire, by erecting or by purchase, a toll-house, and for that purpose may purchase and hold a lot of ground, not exceeding one half acre; they shall keep posted up, in some conspicuous part of said bridge, or where the tolls are collected, a printed list of the tolls authorised by law, under the penalty of one dollar for each day's neglect of such duty. Ground may be purchased for a toll-house.

Sec. 16. If the said bridge shall not be completed within two years from and after the first day of November next, or if it should at any time thereafter remain for two years together so much out of repair as to be unsafe for travelling, then and in that case all the privileges and immunities by this act granted to the said company, shall cease, determine and become forfeited. When bridge to be finished, &c.

This act shall be in force from its passage.

#### CHAPTER CXLVI.

*An ACT limiting the number of Justices of the Peace in Butler, Rockcastle and Grayson Counties.*

Approved January 26, 1810.

*BE it enacted by the general assembly*, That the county of Butler shall be entitled to eleven justices of the peace; the county of Rockcastle, nine justices of the peace; the county of Grayson, ten justices of the peace.

This act shall commence and be in force from and after the passage thereof.

1809.

## CHAPTER CXLVII.

*An ACT providing a compensation for the killing of Wolves, under certain restrictions.*

Approved January 26, 1810.

County courts  
may provide by  
levy.

Sec. 1. *BE it enacted by the general assembly,* That every county court in this commonwealth, at the time of laying the county levy, if a majority of all the justices of the county are of opinion that the interest of the county requires it, may provide, by levy, for the compensation of such persons as have destroyed wolves therein, subject to the regulations herein after prescribed.

What to be al-  
lowed.

Sec. 2. *And be it further enacted,* That for every wolf killed in any county in this state, the county court thereof may, under the restriction contained in the preceding section, allow for each wolf, six months old or under, one dollar, and for each wolf above six months old, one dollar fifty cents, to the person entitled thereto, upon the production of a certificate obtained in the manner hereinafter directed.

Head to be pro-  
duced.

Sec. 3. *And be it further enacted,* That any person claiming the benefit of this act, shall produce before a justice of the peace of the county where the wolf is killed, the head thereof, and the said justice shall administer to such person the following oath, to wit. " You do swear (or affirm, as the case may be) that the head now produced by you is the head of a wolf which you have killed in this county, and that you did not take the said wolf in any other county or state and bring the same into this county, either directly or indirectly, and that you have not wittingly or willingly spared, in this county, the life of any bitch wolf in your power to kill, with a design of increasing the breed ;" and the said justice shall require a specification, on oath, of the time, as near as may be, when the same was killed ; and thereupon the said justice shall grant to the killer a certificate, stating his name, that he has killed a wolf, mentioning the age thereof, of which the justice shall be the judge, and the time and place when and where the wolf was killed, and that the killer has taken the oath required by this act.

Form of certi-  
cate.

Head to be de-  
stroyed.

Sec. 4. Every justice of the peace before whom any wolf's head shall be produced, shall destroy the same forthwith, after granting the certificate.

This act shall commence and be in force from and after the passage thereof.

1809.

## CHAPTER CXLVIII.

*An ACT to amend an act entitled "an act to reduce into one the several acts concerning the Turnpike and Wilderness Road."*

Approved January 27, 1810.

WHEREAS it is represented to the general assembly, that there is no law authorising the keeper of the turnpike gate on the wilderness road to demand or receive any toll for any jack, jinney or mule that may pass through said gate : therefore,

*Be it enacted by the general assembly,* That it shall be lawful for the keeper of the said turnpike gate to demand and receive for each jack or jinney six cents two and a half mills, for each mule six cents two and a half mills, that may pass through the said gate.

This act shall commence and be in force from and after its passage.

## CHAPTER CXLIX.

*An ACT to amend the several acts of Assembly concerning the Town of Frankfort.*

Approved January 27, 1810.

WHEREAS many slaves are by their owners in the country permitted to reside in Frankfort, some of whom keep disorderly houses, and others lead idle lives, calculated to corrupt and seduce other slaves to steal and mispend their time, to the injury of their owners and others : for remedy whereof,

Preamble.

Sec. 1. *Be it enacted by the general assembly,* That the trustees of the town of Frankfort are and shall be, at any time after the first day of March next, authorised and empowered to cause to be apprehended any slave or slaves who may be at any time residing, strolling or harboring for the space of forty-eight hours, within the said town, whose master or mistress shall be unknown or reside in the country, unless such slave or slaves be actually hired to some free white person resident in the said town ; and every slave so apprehended may be committed to close jail, and there kept at the costs and expences of his or her owner or owners, until he or she

Powers granted to the trustees against certain slaves.

1809.

shall be thence removed, all costs and charges for such apprehension and detention being first paid, or every such slave being apprehended may by order of the trustees aforesaid, be hired at public auction for any term not exceeding one month at a time, and so from time to time so often as such slave or slaves shall be so apprehended: *Provided*, that the owner of any slave or slaves so hired, shall, upon application to the said trustees, obtain an order for the delivery of such slave or slaves to him, her or them, on the payment to the person who shall have hired such slave or slaves, a portion of the hire thereof equal to the time such slave or slaves shall then have to serve; and he, she or they who have hired such slave or slaves, shall obey such order accordingly; and the money arising from the hire of such slave or slaves, shall be applied by the said trustees in aid of the public funds of the said town. But it shall be lawful in such case for the trustees to provide for the necessary clothing of the slave during such hiring, either by stipulating with the person hiring the slave to furnish the clothing, or by appropriating so much of his time thereto as shall be necessary.

And whereas it is expedient also to place within the control of the trustees of the town of Frankfort, such free negroes, mulattoes and people of color as resort thereto or reside therein: therefore,

And against va-  
grant and disor-  
derly people of  
color.

Sec. 2. *Be it enacted*, That whensoever information shall be lodged with the said trustees that any such free negro, mulatto or person of color is or shall be going at large or harboring within the said town, without any visible means of subsistence, or if any such person be disorderly and riotous, or keep a disorderly or riotous house, the said trustees may, by order made in the board, cause such person or persons to be apprehended and committed to jail, or bailed to appear at the next county court, who have and shall have authority to enquire into such allegation, and to discharge the person accused as aforesaid, or order him or her to be hired by the sheriff to the highest bidder, for any time not exceeding one month; and the money raised by such hiring, shall also be paid to the said trustees, and go in aid of the public funds of the said town.

And whereas the sum of five hundred dollars in the hands of the trustees of the town of Frankfort would

enable them to extend considerably the improvements of the streets and alleys in the said town, and the citizens of the said town are willing that sum should be raised by a tax on the real property therein, according to a rateable proportion agreeably to valuation: therefore,

1809.

Sec. 3. *Be it enacted*, That the said trustees be and are authorised to raise the additional sum of five hundred dollars, within the year 1810, by a tax on each and all of the lots, being private property, within the said town, whether improved or not, having regard to their just value at the time the same shall be assessed; and for this purpose the said trustees have and shall have power to appoint an assessor, whose duty it shall be to list and value the real property within the said town, upon general principles, and as nearly equal as practicable, and the same to return to the said trustees within such time as they shall order; and upon which value so made the said trustees shall raise the sum aforesaid by a percentage, and cause the same to be collected and paid to them agreeably to such order as they shall make: *Provided*, that the owners of lots within the said town who do not reside therein, shall have until the first day of November 1810, to pay the tax thereon; but should the said tax remain unpaid, or any part thereof, after the said first day of November, any personal property thereon may be taken and sold at auction, to the amount of the said tax; but where, from the indivisible nature of the thing sold, the sum shall amount to more than the tax due, and the costs of sale, which shall not exceed ten per cent. on the amount of the tax, the surplus shall be paid to the former owner or owners of the thing sold; and where there shall not be any personal property on the lot on the said first day of November 1810, the lot itself may be sold for the tax due, and costs of sale, at auction: *Provided*, that it shall have been advertised in the newspaper of the public printer for at least four weeks successively by its proper number in the town plat, and whether it be the whole or a part only of such lot, before the day of sale: *and provided also*, that in every case of a sale of the real property, the owner or owners may at any time within five years thereafter, redeem the same, upon payment of the tax and costs of sale, with one hundred per cent. per annum thereon: *and provided likewise*, that if the real property of any infant, feme covert or person of

Trustees to raise  
a sum of money  
by tax.

1809.

unsound mind shall be sold, each and every such person has and shall have the term of one year after the removal of his or her disability as aforesaid, to redeem his or her property so sold, upon the payment of the tax and costs, with one year's interest thereon as aforesaid of one hundred per centum.

Trustees may erect a house of public worship on the public square.

Sec. 4. *Be it further enacted*, That it shall be lawful for the trustees of said town to authorise a house of public worship to be erected by subscription, or other like way, on the public square in the town of Frankfort, in such place as the governor shall deem least inconvenient to the buildings of the commonwealth, not being within one hundred feet of the capitol, and having due respect to the situation on which the house of the Kentucky Seminary is to be erected; which house of public worship shall be under the care and direction of the trustees aforesaid, for the purpose of public worship; but nothing herein contained shall be construed to authorise or require the funds of the town to be applied by the said trustees in erecting said building.

Trustees' power restrained over S. Frankfort.

Sec. 5. *Be it enacted*, That henceforth the trustees of the said town of Frankfort shall not have or exercise any power or authority over either persons or property within South Frankfort.

Inhabitants may elect trustees.

Sec. 6. *And be it further enacted*, That the inhabitants of South Frankfort, being free white males over the age of twenty-one years, are and shall be authorised and required annually to elect and choose three fit persons as trustees in and for said town of South Frankfort, who, or a majority of them, are and shall be vested with power and authority to call out the said inhabitants, in such manner and at such times as by an order of the board shall be ordained, for the purpose of clearing and improving the streets and alleys in the said town; and the said trustees, or a majority of them, are also authorised and empowered to make by-laws not incompatible with the constitution and laws of the commonwealth, for the good government, regulation and police of the said town.

And whereas the legislature did in the year 1806, appropriate the sum of seven hundred dollars for the purpose of procuring a fire engine, for the preservation of the public buildings in the town of Frankfort; and by the same act authorised the governor for the time being to receive and apply the money to the object aforesaid;

and it appearing to the legislature of 1808, that the said seven hundred dollars had been drawn from the public treasury in January 1807, by Christopher Greenup, then governor, and that no engine had been procured, an act passed vesting the power in the present governor to procure the said engine, and none having yet been procured; for remedy of which, and that those more immediately interested in the procurement of the said engine may possess the means of obtaining it: therefore,

1809.

Sec. 8. *Be it enacted*, That the trustees of the said town of Frankfort be and are authorised and required to procure the said engine with the funds aforesaid; and to obtain the possession of the said funds, the said trustees are hereby authorised and required to call upon the late governor, Christopher Greenup, Esq. for such part of the said seven hundred dollars as he hath not paid to the present governor, and also to call on the present governor for such part of the said seven hundred dollars as he shall have received from the said Christopher Greenup; who are respectively required to pay the sums aforesaid in their hands to the said trustees; and in case of failure to pay as aforesaid by the said Christopher Greenup, the said trustees are authorised and empowered to sue for and recover of the said Christopher Greenup the sum for which he is and ought to be answerable by this act, by motion in the circuit court of Franklin, together with six per cent. yearly from the time he shall have received the same, with costs of suit: *Provided*, that the person against whom such motion is intended to be made, have notice thereof in writing, ten days before the day on which the said motion will be made; and upon such motion so made the said court is authorised and required to enter up judgment agreeably to this act, and upon which execution may immediately issue, on which there shall be no replevy, but the money shall be made as in the case of public defaulters, and paid to the said trustees or their order, for the only purpose of procuring the said fire engine.

The trustees of Frankfort to collect certain monies appropriated to procure a fire engine.

This act shall be in force from its passage.

1809.

## CHAPTER CL.

*An ACT to amend the law concerning Mills and other Water-Works.*

Approved January 27, 1810.

*Sec. 1. BE it enacted by the general assembly, That* hereafter when any person owning land on either or both sides of any water course, the bed whereof belongs to himself, and desiring to build thereon any kind of water-works, and erecting a dam across such stream for working the same, shall make application to the court of the county wherein such lands are, for a writ of *ad quod damnum*, and the same proceedings shall be had thereon and under the same regulations and restrictions as are directed to be had and done by the said recited act in the case of a water grist-mill.

Persons wishing to erect water-works, how to proceed.

*Sec. 2. And be it further enacted, That if any person* shall, contrary to the will of the owner, make or carry fire within twenty yards of any grist-mill or other water-works, such offender shall forfeit and pay to the owner of such mill or water-works the sum of two dollars, recoverable before a justice of the peace, and moreover be liable to the action of the person aggrieved for any damage which shall accrue, as though this section had not been passed: *Provided however*, that nothing herein contained shall be construed to impose the fine and penalty aforesaid, on any person making or carrying fire on his or her own premises, although it may be within the twenty yards of a mill or water-works.

Penalty for making fire near water-works.

Provido.

## CHAPTER CLI.

*An ACT for the relief of Peter Cummins and John N. Lee.*

Approved January 27, 1810.

This act made compensation to Peter Cummins for the expenses he had incurred and the exertions he had made to apprehend William Walker, John Fisher and Adam Barger, who were charged with the murder of John Coffman, a citizen of Indiana, and to John N. Lee for the expenses he had incurred and the exertions he had made in re-taking John Carter, who stood charged with the murder of James Miller, and had broke jail.

## CHAPTER CLII.

*An ACT declaring the boundaries of certain Counties in this Commonwealth.*

Approved January 27, 1810.

WHEREAS doubts are suggested whether the counties calling for the river Ohio as the boundary line, ex-



tend to the state line on the north-west side of said river, or whether the margin of the south-east side is the limit of the counties: to explain which,

1809.

*Be it enacted by the general assembly,* That each county of this commonwealth, calling for the river Ohio as the boundary line, shall be considered as bounded in that particular by the state line on the north-west side of said river, and the bed of the river and the islands therefore shall be within the respective counties holding the main land opposite thereto, within this state, and the several county tribunals shall hold jurisdiction accordingly.

This act shall be in force from and after its passage.

#### CHAPTER CLIII.

*An ACT to regulate the manner of keeping and collecting Accounts due the Penitentiary, and for other purposes.*

Approved January 30, 1810.

Sec. 1. *BE it enacted by the general assembly,* That all agreements or contracts made with the penitentiary, through the medium of the proper officer or officers, whether for money or property, to become due to or from the penitentiary, the office of the agent shall be the place of payment, unless some other place shall be expressed in the contract: *Provided however,* that in all cases of debts, accounts or demands due to the institution, a demand may be made at any other place, if a demand be necessary by the contract.

Pen'y. house the place of discharging contracts with that institution.

*Proviso.* Pen'y. dues may be demanded elsewhere.

Sec. 2. *And be it further enacted,* That hereafter it shall not be necessary for the agent to open and keep a separate account for each convict confined in the penitentiary, but one general account for the whole of the convicts, containing their expenses and profits, shall be deemed sufficient, any law to the contrary notwithstanding.

Separate account with each convict dispensed with.

A general account to be kept.

Sec. 3. *And be it further enacted,* That the agent of the penitentiary shall, on or before the first day of June next ensuing, and on or before that day in every year forever thereafter, place all accounts, debts and demands which now are or shall then become due and payable to the penitentiary, into the hands of proper officers for collection, who shall give receipts therefor and proceed with

When debts due the pen'y. shall be put in suit.

1809.

Account attested by agent *prima facie* evidence.

Proviso.

all practicable dispatch to collect and account for the same, at the office of the agent, agreeable to law; and all open accounts, attested by the agent, shall be deemed *prima facie* evidence of the demand, in all cases where no plea or legal defence shall be set up, denying the same: *Provided however*, that if the agent may deem it necessary and expedient, he may enforce the payment of any debts due to the penitentiary, at any other time, when it may be requisite so to do.

Sec. 4. *And be it further enacted*, That in all actions, commenced on behalf of the penitentiary, of whatsoever species they may be, the agent, or any counsel employed for that institution, may endorse on any writ which may be issued, that bail is required in a reasonable sum, named in such endorsement, and all sheriffs or other officers executing such process, shall be governed accordingly, and shall execute the same, requiring bail as in cases of debt founded on specialty.

Supplies of manufactured articles may be exported.

Restriction.

Agent to take bond of transporter, or obtain insurance thereon.

Convicts to be subsisted from the profits of their labor.

Sec. 5. *And be it further enacted*, That if the quantity of manufactured articles arising from the penitentiary, remaining unsold, shall at any time, in the opinion of the acting inspector and the agent, justify the measure, the agent, by and with the advice and consent of the acting inspector, may make any contract for the freight or for the transportation of such articles by water, to any market in the United States, and in all cases of transportation pursuant to this section, the agent shall take bond with approved security from the undertaker or undertakers, or may obtain insurances on any risk or hazard, agreeably to law.

Sec. 6. *And be it further enacted*, That from and after the first day of September next, the convicts in the jail and penitentiary house shall be subsisted from the profits of their labor, either by money arising from the sale of articles manufactured by the said convicts, or by exchanging those articles for articles of subsistence, as to the keeper may seem most advantageous to the commonwealth.

Sec. 7. *And be it further enacted*, That from and after the first day of September next no money shall be drawn from the treasury for subsisting the convicts in the said jail and penitentiary house, any law to the contrary notwithstanding.

## CHAPTER CLIV.

1809.

*An ACT authorising the County Court of Mercer to sell part of the Public Square in the Town of Harrodsburg.*

Approved January 30, 1810.

## CHAPTER CLV.

*An ACT providing for the recovery of Costs expended by Jacob Skyles and others in defending themselves against certain prosecutions.*

Approved January 30, 1810.

They had been prosecuted before the legislature for misdemeanor in office, with a view to their removal, and had been acquitted. This act authorised them to recover, in actions of debt against their respective prosecutors, all legal costs by them expended.

## CHAPTER CLVI.

*An ACT to authorise the County Court of Clay to lay their County Levy, and for other purposes.*

Approved January 30, 1810.

The "other purposes" were, allowing the county court of Franklin to lay their levy in February or April then next ensuing.

## CHAPTER CLVII.

*An ACT authorising George Calhoun, Sheriff of Henry County, to give bond and security at the next February Court, for the collection of the public Revenue.*

Approved January 30, 1810.

## CHAPTER CLVIII.

*An ACT authorising the Trustees of the Bethel and Shelby Academies to sell their Lands, and for other purposes.*

Approved January 30, 1810.

Sec. 1. *BE it enacted by the general assembly, That* the trustees of Bethel academy may dispose of all the lands granted to them by this commonwealth, or such other lands and tenements they have by grant, or by other deed or deeds; and the trustees are hereby authorised and empowered to make deeds of conveyance for all or any part of the lands granted to them, by the

Trustees of the Bethel academy may dispose of the lands there-  
of.

1809.

Provido.

Incorporated.

Trustees of the  
Shelby academy  
may sell the  
lands thereof.

Bulletin,

name of the trustees of Bethel academy, either for cash in hand or on credit, or exchange them for other lands, for the only proper use and benefit of an institution of learning, either at the present site, in the county of Jessamine, or at any other place in the said county, a majority of the said trustees may direct: *Provided however*, that the said trustees, or a majority of them, may make use of so much of the proceeds of the sale of said lands as will be sufficient to reimburse them the expenses they may be at for the purpose of disposing of said lands, and purchasing other lands for the use of a public school in the said county of Jessamine.

Sec. 2. *And be it further enacted*, That the said trustees in their names may sue and be sued; and they are hereby empowered to recover any monies now due them, or which may hereafter become due, for the sale of all or any part of the lands which in this act they are authorised to sell; and they are further empowered to purchase bank stock in the state bank to any amount not exceeding three fourths of the nett proceeds of the sales of the lands now belonging to the Bethel academy, and the interest arising from such stock shall be disposed in any manner that a majority of the said trustees or their successors may deem most to the advantage of the institution of learning, they now have or may hereafter have in the county aforesaid.

Sec. 3. *And be it further enacted*, That the trustees of the Shelby academy shall be and they are hereby authorised to sell the whole or such part of the land belonging to said academy as they shall think fit, for the purpose of completing the said academy and purchasing a library and globes; and the said trustees and their successors are hereby vested with full and complete power to convey to the purchaser the land by them sold for the purpose aforesaid.

#### CHAPTER CLIX.

*An ACT to alter the time of holding certain Circuit Courts.*

Approved January 30, 1810.

Sec. 1. *BE it enacted by the general assembly*, That so much of every act as requires or authorises the Bullitt circuit court to commence on the first Monday in October, shall be and is hereby repealed.

Sec. 2. *Be it further enacted*, That the fall term of said circuit court, shall hereafter commence on the fourth Monday in September in every year, and shall at that term continue two weeks, if the business shall require it. 1809.

Sec. 3. The circuit court of the county of Nicholas shall commence and be held on the fourth Mondays in March, June and September in every year, and shall continue six juridical days at each term, if the business thereof require it. Nicholas.

Sec. 4. The circuit court of the county of Floyd shall commence and be held on the fourth Mondays in April, July and October in every year, and shall continue six juridical days at each term, if the business thereof shall require it. Floyd.

Sec. 5. The circuit court for the county of Greenup shall commence and be held on the third Monday in April in every year, instead of the third Monday in March, and may at each term sit six juridical days, if necessary. Greenup.

Sec. 6. The circuit court for the county of Lewis shall commence and be held on the third Monday in March in every year, instead of the fourth, and may at such term continue six juridical days, if the business thereof require it. Lewis.

Sec. 7. *Be it enacted*, That all writs, recognizances, Regulations as and every process which are, or shall be sued out before to process. the first term of the said courts respectively, as directed by this act, and made returnable to the terms of the said courts as heretofore directed by law to be held, shall be returnable and returned to the first terms of the said courts respectively, as directed by this act to be held, and there shall be no discontinuance of any suit, writ, process or motion depending or to be made or issued in the said courts, or either of them, by reason of the alteration made by this act in the terms of holding said courts.

Sec. 8. *Be it further enacted*, That the county courts of the said counties shall, after the first day of March next, be held on the same Mondays in every month in the year in which the circuit courts are therein respectively directed by this act to be held, except the months in which the circuit courts are holden. County courts in said counties when to be held

This act shall commence and be in force from its passage.

1809.

## CHAPTER CLX.

*An ACT authorising the erection of a Turnpike Gate on the road leading from the mouth of Triplett's Creek, and from Lewis's Mill, on Fox's Creek, in Fleming County, to the mouth of Big Sandy River.*

Approved January 30, 1810.

Recital.

WHEREAS the roads leading from Triplett's creek, on Licking river, and from Lewis's Mill, on Fox's creek, in Fleming county, to the mouth of Big Sandy, passes through a tract of country so thinly inhabited, that they cannot be kept in repair in the ordinary way; and it being represented that improvement on the above mentioned roads would conduce to the public advantage,

Commissioners appointed.

Their duty.

Sec. 1. *Be it enacted by the general assembly*, That Benjamin Bedford, John Hunt, John Fowler, John M'Intire, Esq. William P. Roper and Benjamin South, any four of whom shall have the power of performing the requisitions of this act, shall be appointed commissioners, whose duty it shall be to erect or cause to be erected, a turnpike gate, on some convenient place on the road leading from the mouth of Triplett to Big Sandy; and for that purpose to purchase so much land as may be necessary, not exceeding two acres; and the said commissioners shall have the power, and they are hereby invested with the authority to contract with any person they may think proper, for the purpose of erecting the same; and all expences incidentally incurred in consequence thereof, shall be paid in the manner herein after directed.

Shall advertise the farming of said turnpike.

Keeper shall give bond.

Sec. 2. *And be it further enacted*, That as soon as the commissioners aforesaid shall have been appointed, they shall advertise in one of the public gazettes printed in the town of Frankfort, and also one of the public papers printed in Lexington, for four weeks successively, that the said turnpike is to be farmed out to the highest bidder, and shall appoint some day and place of meeting for the purpose of receiving offers for farming the same, which shall be inserted in said advertisement; and they shall then and there let out to the highest bidder, for one year from the time of completing the turnpike as aforesaid, the said turnpike; and shall take bond and sufficient security, payable to the commissioners and

their successors in office, for the due and faithful payment of the sum agreed on for the same; and the person farming the said turnpike shall have the right and privilege to receive the rates herein after mentioned, for passing the same: For each person, except post-riders, expresses, and women, and children under the age of ten years, six and a quarter cents; for every horse, mare or mule, six and a quarter cents; for every carriage with two wheels, twenty-five cents; for every carriage with four wheels, fifty cents; for every head of neat cattle, going to the eastward, three cents; and if any person shall forcibly pass or attempt to pass the said turnpike, without paying the fees aforesaid, or avoid or attempt to avoid it, they shall forfeit and pay ten dollars, for the use of the keeper of the turnpike; which sum may be recovered before any justice of the peace in this commonwealth.

1809.

Rates of toll.

Penalty on certain offenders.

Sec. 3. *And be it further enacted*, That the bond required by this act to be taken from the keeper of the said turnpike, shall be returned by the said commissioners to the clerk of the county court of Bourbon; and in case of failure to comply with the condition thereof, the same proceedings are hereby authorised to be had thereon, in said court, as are allowed by law to be had against defaulting public debtors.

Keeper's bond to be filed in clerk's office of Bourbon.

Sec. 4. *And be it further enacted*, That it shall be the duty of the keeper of the said turnpike to furnish himself with a well bound book, in which he shall enter, alphabetically, the name of any person residing within ten miles, on a parallel line with said road, and who may have made application for that purpose, to exempt him from the payment of any toll in passing through said turnpike: *Provided*, he produces the certificate of any of the superintendants appointed by said commissioners to keep the turnpike in repair, and takes, in addition thereto, an oath or affirmative (as the case may be) "that he verily believes that he resides within the distance above mentioned of said road, and that he has worked three whole days in the course of one year on said turnpike;" then, and in that case only, shall said person be exempted from paying the toll arising from the provisions of this act.

Certain persons exempted from paying toll.

Proviso.

Sec. 5. *And be it further enacted*, That it shall be the duty of the said commissioners to erect or cause to be

Commissioners to have gate erected in a certain time.

1809.

Their compensation.

Proviso.

May purchase land upon which to erect said gate.

To appoint superintendants of the road.

Commissioners may enforce payment of subscriptions.

Governor may fill vacancies.

Toll money to be applied to repair the road.

erected, a turnpike gate, within six months from and after the passage of this act; and as a compensation for discharging the trust hereby reposed in them, each of the said commissioners shall receive out of the first monies arising from said turnpike, or if they should so prefer, out of the property subscribed for the improvement of said roads, such a part thereof as the justices of the county court of Bourbon shall award to them, as a remuneration for their services in viewing said road, and for performing such other services as are required by this act: *Provided however*, that if the said commissioners do not obtain a donation of so much land as will be requisite for the erection of a turnpike gate, and such essential buildings as may be necessary, then it shall be the duty of the said commissioners to pay for the same, and for the actual erection of said gate and buildings, out of the first monies or property, or from either of the sources arising in consequence of passing this act. And it shall also be the duty of the said commissioners, after the expenses aforesaid are defrayed, to appoint superintendants to overlook said roads, to compensate them in the manner the justices of the county court of Bourbon shall direct; and to appropriate for the purpose of improving the turnpike, in the way which they may think the most advantageous to public utility, all the balance of money or property which may be in their possession; and they are hereby invested with the power to sue before a justice of the peace or in any court of record in this commonwealth, for any money or property subscribed for improving said turnpike road.

Sec. 6. *And be it further enacted*, That the governor for the time being and his successors in office, shall have the power, upon the death, absence, refusal to act, or resignation of any of the said commissioners, to appoint others in their stead, whose compensation shall be made in the same manner as is directed in the fifth section of this act.

Sec. 7. *And be it further enacted*, That the money received from the keeper of said turnpike, in consequence of his farming the same, after all the necessary expenses are paid, shall be applied to the improvement of said road, under the direction of the said commissioners, who shall make an annual report to the county court of the respective counties through which the same passes.



Sec. 8. *And be it further enacted,* That it shall be lawful for the said commissioners to receive subscriptions in money or property, for improving said road, to any amount not exceeding five thousand dollars; and they shall enter into bond and security, in the county court of Bourbon, payable to the commonwealth, and in the penalty of five thousand dollars, for the faithful appropriation of any money or property so received by them. This act shall commence and be in force from and after the passage thereof.

1809.

Amount of sub-  
scriptions.Commissioners  
to give bond.

## CHAPTER CLXI.

*An ACT for the benefit of Johnston Sargent and Richard Morton.*

Approved January 30, 1810.

This act regulates some mistaken proceedings relative to their head-right claims.

## CHAPTER CLXII.

*An ACT to repeal in part an act passed at the session of 1808, concerning the Town of Augusta.*

Approved January 30, 1810.

The act referred to is the 9th Chapter of this Volume.

*BE it enacted by the general assembly,* That the preamble, together with the first, second and third sections of an act approved January 3d 1809, entitled "an act to amend an act entitled an act to amend and reduce into one the several acts concerning the town of Augusta, in Bracken county," be and the same is hereby repealed, so far as relates to any other further improvements. But those persons who have already built, or commenced building on any lot or lots on the north side of Water street, shall be secured in the same, according to the provisions of the before recited act, any thing in this act to the contrary notwithstanding.

This act shall commence and be in force from and after the passage thereof.

## CHAPTER CLXIII.

*An ACT to amend an act, entitled "an act to incorporate the Shareholders and Directors of the Lexington, Georgetown and Danville Libraries."*

Approved January 30, 1810.

The act referred to will be found in Vol. 11, page 375.

1809.

*Sec. 1. BE it enacted by the general assembly, That* the sharers of the Lexington library, shall have power to extend their number of shares to five hundred; to hold real or personal property to any amount not exceeding the value of ten thousand dollars, exclusive of their books, maps and drawings; to appoint by by-law, such day and place as may seem best for holding their annual general meetings; and to adopt such rules as may seem necessary for the admission of shareholders, and the transfer and forfeiture of shares.

*Sec. 2. And be it further enacted, That* any shareholder may, at any time, withdraw from the corporation aforesaid, by entering upon the records of said corporation before the secretary, a relinquishment of his share or shares, and by discharging all claims which the said corporation may have on him under its by-laws; and that until such relinquishment is made, every shareholder and his legal representatives shall be responsible for the amount of all debts, fines, or contributions arising under the by-laws or regulations of the corporation.

*Sec. 3. And be it further enacted, That* every rule or regulation of the Lexington library before the same was incorporated, and every by-law of the corporation aforesaid, shall be repealed by the by-laws hereafter to be made; that fifteen or more shareholders, who shall meet at the time to be appointed for an annual general meeting, shall have power to proceed to the election of directors and other officers, and that a majority of the shares represented at such meeting, and concurring in such election, shall decide the same; and that by-laws shall regulate the mode of voting, the manner of voting by proxy, and the number of votes, that those who hold more than one share, shall be entitled to; the fines, penalties and forfeitures, which shall be paid for a failure to comply with the by-laws of the corporation, as well as the contributions or instalments which may be required from shareholders, and the fines which may be laid for the non-payment thereof.

*Sec. 4. And be it further enacted, That* hereafter no shareholder shall be entitled to vote in any of the acts or proceedings of the corporation aforesaid, until he shall have received a written evidence under the seal of the corporation, of the share or shares to which he is entitled; that the secretary shall, and he is hereby directed

to keep a record of all evidences of shares issued to shareholders, which record, or a certified copy thereof, under the seal of the corporation ; or due proof of the delivery of books from the library, to any person claiming a right to receive them, or payment of contribution, or fines by any person, shall be full and sufficient evidence of such person's rights and duties, or obligation as a shareholder, in any matter of controversy, wherein such shareholder and the corporation may be concerned.

1809.

## CHAPTER CLXIV.

*An ACT for the benefit of John M'Gill and Andre~~to~~  
Grisal.*

Approved January 30, 1810.

This act released them respectively from paying for some head-right land on account of their indigence.

## CHAPTER CLXV.

*An ACT altering the mode of taking in Lists of Taxable Property.*

Approved January 30, 1810.

Sec. 1. *BE it enacted by the general assembly, That* the lists of taxable property in this commonwealth, shall hereafter be taken and ascertained in the form and manner following, viz :

Sec. 2. That the county court of every county shall, at their first court after the first day of April, in the year one thousand eight hundred and ten, and at the February or March county court of each year thereafter, appoint some fit person in the bounds of each militia company, to receive and take in all lists of taxable property, within the same ; and also have full power to make re-appointments whenever they shall think proper to do so ; and if the bounds of any company should lie within the bounds of two or more counties, the court of the county in which the commanding officer of such company shall reside, shall make the appointment ; and each person appointed by virtue of this act, for the purpose of taking in the lists of taxable property, shall, before he begins to exercise the duties of his office, take the following oath or affirmation, before some justice of the peace. " I, A. B. do solemnly swear or affirm, (as the

County court to  
appoint a person  
in each militia  
company.

Each person to  
take oath.

Form of oath.

1809.

Justice to certify.

case may be) that I will, to the best of my knowledge, diligently and faithfully execute the duties of a commissioner, in taking in the lists of taxable property in the militia company to which I am appointed, according to the directions of the act, entitled an act altering the mode of taking in lists of taxable property, without favor, affection, or partiality, so help me God." A certificate of which oath, shall be transmitted, by the justice administering the same, to the clerk of the county, whose duty it shall be to preserve the same.

Duty of commissioners.

Sec. 3. The person so appointed in each company, shall attend at the place of mustering in the bounds of the company to which he is appointed to take in lists of taxable property, from ten o'clock in the morning until four o'clock in the evening of the several days set apart for mustering in such company, in the months of April and June, of which attendance, at each muster, he shall give ten days previous notice by advertisement at two at least of the most public places in his district.

Duty of persons subject to taxation.

Sec. 4. *Be it further enacted*, That it shall be the duty of each and every person, subject to taxation, to attend at the time and place required by this act, and give in a full and fair list, in writing, of all persons and property he is bound to pay taxes for, by any law in force in this commonwealth.

How commissioners to proceed.

Sec. 5. *Be it further enacted*, That it shall be the duty of the person so appointed by the court, to attend at the time and place required by this act, to take in and receive lists of taxable property from all such persons as shall attend to give in the same, and the person, so appointed by the court, is hereby authorised and required to administer to each person giving in his or her lists of taxable property, the following oath or affirmation, to wit: "I, A. B. do solemnly swear or affirm, (as the case may be) that such list contains a true and perfect account of all persons and every species of property belonging to, or in my possession, subject to taxation, on the tenth day of March last; and that no contract, change, or removal whatever of property has been made, or entered into, or any other mode advised or used, in order to evade the payment of taxes."

Oath.

How list may be given in, when persons have failed to attend the commissioner.

Sec. 6. *Be it further enacted*, That each person subject to taxation, who shall fail or refuse to attend at the time and place required by this act for the purpose of

taking in lists of taxable property, shall have till the first day of August to attend at the house of the person so appointed by the court, and give in his list of taxable property in the same manner as if he had attended at the time appointed, as aforesaid, or to transmit his or her list of taxable property, accompanied with such affidavit as is required by this act.

1809.

Sec. 7. *Be it further enacted,* That if any person shall give, transmit, or deliver to the person authorised by this act to receive lists of taxable property, a fraudulent list of property subject to taxation, or shall fail or refuse to attend and give a list to the person authorised by this act, on oath or affirmation, or transmit such list, agreeably to the provisions of this act, the person so failing to attend and give in his list, or transmit the same, or giving or transmitting a fraudulent list, shall be liable to a fine of five dollars; and the person so appointed by the court to receive such list, shall proceed to list his property, agreeably to the best information he can procure; and all such property so enlisted, shall moreover be subject to a treble tax, to be collected and distrained by the sheriff as in other cases; which fines and treble tax shall be recovered in the county court by the following mode of proceeding, and shall be applied as hereafter directed.

Fine for giving in fraudulent list, or failing or refusing to give in lists.

Sec. 8. *Be it further enacted,* That the person so appointed by the county court, as aforesaid, shall give information to the county court for his county in person, if he is able to attend; if not, in writing, at any time before the first day of September, of all such persons as shall have so failed, or given in a false and fraudulent list of their taxable property, which court shall forthwith direct their clerk to issue a summons, requiring the party to attend at the next court to be held for the county, to shew cause, if any he or she can, why he or she shall not be fined and treble taxed for failing to deliver in his or her list, or giving in a false and fraudulent list of taxable property; and any person or persons being served therewith, by the sheriff, may appear and defend the same; and the court shall proceed to enquire into and decide the same in a summary way, according to the justice of the case; and if the defendant shall be found guilty, the court shall give judgment, and award execution for such fine and treble tax and costs, unless the

Further duty of commissioner.

Duty of courts, and party to be summoned.

If found guilty judgment for fine and costs.

1809. court, for good cause shewn, shall continue the same until the next term ; and the court shall certify such treble tax to the auditor and sheriff, that the same may be collected and accounted for ; the fine, after deducting thereout as much as the court may think a reasonable allowance to the person authorised to take in the aforesaid list of taxable property for his extraordinary trouble on the occasion, shall be applied towards lessening the county levy ; and the treble tax shall be charged to the sheriff, and accounted for as other taxes.

*Lists to be delivered to clerk of county court and his duty.* Sec. 9. *Be it further enacted,* That each person so appointed to receive lists of taxable property, as aforesaid, after having collected the lists of taxable property in his district, in manner before directed, they shall deliver the same to the clerk of the county court for the said county, in which the person giving in such list of taxable property resides, on or before the fifth day of September ; and the said clerk shall proceed to make out alphabetical books of all persons and property subject to taxation, in the present usual form ; and shall examine said books, and certify them to be correct ; and shall, as soon as the sheriff of his county shall enter into bond for collecting the tax as the law directs, deliver to such sheriff one copy of said book, as his guide for collection, and transmit one copy to the auditor of public accounts ; and the clerk shall be allowed for his services in making out the said books, five mills for each line composed of words and figures contained in such books, which shall be certified by the court to the auditor, who shall issue his warrant on the treasurer for the same ; and the auditor shall keep and preserve said books ; and the clerk shall also retain and keep the remaining book in his office, which shall serve for laying the county levy ; and it may be examined, or copies had therefrom at the charge of any person or persons requiring the same.

*Exemptions.* Sec. 10. *Be it further enacted,* That the person so appointed to take in lists of taxable property as aforesaid, shall be exempt from fine for not doing militia duty, working on highways and serving as jurors for one year.

*Fine on clerk if he fails in his duty.* Sec. 11. *Be it further enacted,* That the person so appointed by the county court for the purpose of taking in lists of taxable property, or clerk, failing to perform

any one of the duties imposed upon them by this act, shall be subject to a fine of one hundred dollars, to be recovered by the auditor, in the general court, or any circuit court, on motion, ten days notice of said motion being first given by the auditor. 1809.

Sec. 12. *Be it further enacted*, That so much of all laws as provides any compensation to commissioners of the tax, shall be, and the same is hereby repealed. Laws repealed compensating commissioners.

This act shall commence and be in force from and after the first day of February next.

#### CHAPTER CLXVI.

##### *An ACT for the relief of Francis Triplett.*

Approved January 30, 1810.

He was under a prosecution in Montgomery for shooting Daniel Connor with an intent to kill. This act authorised a change of Venue to Bourbon; Triplett never availed himself of it, and died before a trial was had any where.

#### CHAPTER CLXVII.

##### *An ACT for the benefit of the Administratrix of Allen M. Wakefield, deceased.*

Approved January 30, 1810.

She had taken out administration when the court had no right to sit; the term had been altered, but the justices were not informed of the alteration. This act confirmed the administration.

#### CHAPTER CLXVIII.

##### *An ACT to amend the acts regulating the Conveyances of Land.*

Approved January 30, 1810.

The compiler was not aware, until after the former volumes had been printed, that there was any necessity of republishing the fourth section of the land law of 1748; he is now convinced, that it is not only necessary to the decision of cases which depend on the provisions of that act, the number of which is much greater than he had, until lately, any idea of, but that it is absolutely necessary to a correct understanding of our acts regulating conveyances. The first and second sections of that act will be found in Volume I, page 365; the third section goes to the confirmation of some unrecorded grants theretofore made, the fourth section is as follows:

“All bargains, sales and other conveyances whatsoever, of any land, tenements, or hereditaments, whether they be for passing any estate of freehold or inheritance, or for term of years, and all deeds of settlement upon marriage, wherein either land, slaves, money or other personal things shall be settled or covenanted, to be left or paid at the death of the party, or otherwise, and all deeds of trust and mortgages whatsoever, made and executed at any time after the third day of June, one thousand seven hundred and thirty-five,

1809.

"and before the passing of this act, and all such deeds and conveyances which shall hereafter be made and executed, shall be void as to all creditors and subsequent purchasers, unless they shall have been, or shall be acknowledged, or proved, and recorded according to the directions of this act, but the same as between the parties and their heirs shall nevertheless be valid."

B. L. page 143.

I shall take this occasion to remark, that there appears to me to be a defect in our law respecting the authentication of foreign deeds. They require the acknowledgment to be made before some judicial officer of the county in which the party resides; for, although this may be done before any court of law, mayor, or chief magistrate of any city, town, or corporation, yet such court, city, town, or corporation must be in the county where the party resides. Now it is believed that there are some parts of the United States in which no such division as county exists, and, perhaps, in one half the civilized world, such division is utterly unknown. So sensible were the legislature of Virginia of this defect, that in the year 1794, they passed an act for the avowed purpose of remedying it; this act the reader may see in their revised code, page 340. But the necessity of legislative interposition in this country, is not as great as might appear at first view, for in the year 1776, the legislature of Virginia passed an "*Act to enable persons residing in other countries to dispose of their estates in this commonwealth with more ease and convenience.*" The latitude of expression used in the second section of that act, seems calculated to remove great part of the difficulty I have mentioned. At the time of the publication of the first volume, I had not adverted to the abovementioned defect, and, therefore, directed the latter part only of this act to be printed, which the reader will find in page 566. I now deem it advisable to re-print the 1st, 2d and 3d sections; the 4th, 5th and 6th sections contained temporary provisions, operating on transactions then past, and have long ago had their effect.

## 1776. CHAN. REV. PAGE 42.

*"An act to enable persons living in other countries to dispose of their estates in this Commonwealth with more ease and convenience.*

I. WHEREAS the several acts of Assembly which require the recording of deeds, and other conveyances of lands and tenements within this commonwealth, have been found beneficial, and a very great security to creditors and purchasers, but the necessity of an acknowledgment, or proof by witnesses, of the execution of such deeds, being made in open court previous to their admission to record, hath made it very difficult and troublesome for the proprietors of lands who reside in other countries to convey or settle their said lands, and it hath been doubted whether any *feme covert*, being out of the commonwealth can legally pass her estate in lands here by conveyance, in which she may be willing to join with her husband, no certain and determinate method having been provided for the privy examination of such *feme covert*, essentially necessary to give validity to her conveyance:

II. *Be it therefore enacted, by the General Assembly of this Commonwealth, and it is hereby enacted by the authority of the same, that from and after the passing of this act all deeds and conveyances whatsoever made in writing, indented and sealed by any person or persons whatsoever residing in any other country, for passing any lands and tenements, or other estate situate in this commonwealth, which shall be acknowledged by the party or parties making the same, or proved by three or more witnesses to be his, her or their act and deed, before the Mayor or other chief Magistrate, of the city, town, or corporation, wherein, or near to which, he, she or they shall reside, and such acknowledgment or proof, certified by the Mayor or other chief Magistrate, under the common seal of the said city, town, or corporation, annexed to the deed, shall be admitted to record in the General Court, or court of the county where the lands or other estate lie, and shall be as effectual for passing the estate therein mentioned as if the conveyance had been acknowledged or proved in such court; or where the*



parties making such deeds shall reside in any of the States of America, and there shall happen to be no city or town corporate within the county wherein they shall dwell, a certificate under the hands and seals of two justices or magistrates of the county, that such proof or acknowledgment hath been made before them, together with a certificate from the Governor, under the seal of such state, or from the clerk of the county court, under the common seal of the county, that the persons certifying such proof or acknowledgment are justices or magistrates within the same, shall authorise the recording of such deeds, and make them effectual as aforesaid.

III. *PROVIDED always, and be it further enacted*, that where any person, making such conveyance, shall be a *feme covert*, her interests in any lands or tenements shall not pass thereby unless she shall personally acknowledge the same before such Mayor or other chief Magistrate, or before two justices or Magistrates as aforesaid, according to her place of residence, and be by him or them previously examined, privily and apart from her husband, whether she doth the same freely and voluntarily, and without his persuasions or threats, and a certificate made as before directed of such privy examination, and her free acknowledgment of the deed or conveyance; but upon such certificate annexed to the deed or conveyance being produced to the General Court, or court of the county wherein the lands lie, the same shall be admitted to record, and be as effectual for passing the estate of such *feme covert*, in the lands mentioned in the conveyance, as if such *feme* had acknowledged the same in open court, and been there privily examined."

I had once supposed, that the act of 1798 [Volume II, page 76] had remedied the defect I have mentioned; but upon a careful examination, I am now convinced, such an opinion is not warranted by any thing contained in the act.

Sec. 1. *BE it enacted by the general assembly*, That so much of the act of assembly regulating conveyances, as requires three witnesses to prove a deed so as to authorise it to be recorded, shall be so far changed as to require only two witnesses.

Sec. 2. *And be it further enacted*, That if any person making a deed of conveyance, shall acknowledge the same in any county court of this commonwealth, or if it shall therein be proved, by two credible witnesses, or if he shall acknowledge it in the office of any such court, before the clerk thereof, or if it shall be proved in such office, before the clerk, by two credible witnesses, it shall be lawful for the clerk to certify the same on such deed, and being duly certified in any of the ways aforesaid, shall authorise the same to be recorded in the office of the county court of the county in which the land lieth, or in the office of the general court, or court of appeals, as though the acknowledgment or proof had taken place in the recording office; and the tax shall be paid to the clerk, in whose office the deed is recorded, who shall be accountable for the same, in the same manner as by law he is liable for other taxes or deeds, recorded in his office; and if the due acknowledgment, on privy examination

1809.

Two witnesses  
to prove deed.How deeds to  
be admitted to  
recording in  
general court  
and court  
of appeals.How dower  
transferred.

1809. of the wife of the person making the deed, shall have been taken by the court, or clerk receiving the acknowledgment or proof of the deed, as the case may be, and that being also duly certified with the deed, and recorded, shall transfer such wife's estate or dower, in such land, as fully as if the examination had been made by the court, or clerk in whose office the deed shall be recorded.

Clerk of general court or court of appeals may take acknowledgment of the wife.

Sec. 3. *And be it further enacted*, That it shall be lawful for the clerk of the general court, or court of appeals to take the due acknowledgment or privy examination of the wife of a person, making a deed of conveyance; which being duly taken and certified, shall be effectual to convey the estate or dower, as though it had been taken by the court, or other person, authorised to take and certify the same.

#### CHAPTER CLXIX.

*An ACT to amend the act, entitled "an act for the regulation of the Town of Columbia in Adair County."*

Approved January 30, 1810.

The act here alluded to is the second chapter of this volume.

WHEREAS the act passed at the last session of the general assembly, entitled "an act for the regulation of the town of Columbia in Adair county," has not been carried into effect, owing to the promulgation of the law being later than the time of electing the trustees as directed by the before recited act: therefore,

Sec. 1. *BE it enacted by the general assembly*, That an election for trustees for said town of Columbia, may be held on the second Saturday in March next, subject to all the rules and regulations that are provided for in the said recited act; and the said trustees, when so elected, shall be vested with all the powers to carry into effect the said recited act, as are therein given to trustees.

Sec. 2. *And be it further enacted*, That elections for trustees for said town, shall hereafter be held on the second Saturday in January, in every two years thereafter, agreeable to the provisions of the said recited act.

This act shall commence and be in force from and after its passage.

## CHAPTER CLXX.

1809.

*An ACT to amend the several laws concerning Inspections.*

Approved January 30, 1810.

Sec. 1. *BE it enacted by the general assembly,* That upon the report of commissioners, appointed by the court to examine the state of any ware-house established by law, for the inspection of tobacco, hemp, or flour, it shall appear that such ware-house is in want of repair, the court to whom such report may be made shall, at the same court, enter up an order directing the inspectors immediately to cause such repairs to be made at the expense of the proprietor or proprietors of such ware-house; and the said inspectors shall retain the money by them received for ware-house rents, until the amount thereof be sufficient to effect the said repairs; and it shall be the duty of the inspectors, at any time when repairs may be wanting to a ware-house, to give information to the court of the county in which such ware-house shall be established, who shall immediately cause such repairs to be made, under the same rules and regulations as is directed by this act, upon the report of commissioners, appointed by court to examine into the state of ware-houses.

Sec. 2. *And be it enacted,* That flour barrels shall be deemed sufficiently hooped, if instead of ten smart hoops, they shall be bound with six flat hoops.

Sec. 3. *Be it further enacted,* That so much of every law, as imposes a fine or penalty on the exportation of tobacco, by those who raise the same, or by their supercargo, without inspection, is hereby repealed.

This act shall be in force from its passage.

## CHAPTER CLXXI.

*An ACT appropriating the Lands acquired by the Treaty of Tellico.*

Approved January 31, 1810.

Sec. 1. *BE it enacted by the general assembly,* That it shall be lawful for every free white male, or widow, or other unmarried female, above the age of eighteen years, who may have actually settled and resided, and who may hereafter actually settle and reside, for the space of six months, on any waste and unappropriated

Lands how to be taken up.

1809.



lands, lying in that section of this commonwealth, acquired by the treaty of Tellico, to apply to the circuit court of the county in which such actual settlement may have been made, and upon proving to the said court, by two reputable and disinterested witnesses, that he or she has actually settled and resided on the lands aforesaid for the space of six months last past, shall be entitled to a certificate for any quantity of land, not exceeding two, nor less than one hundred acres, including the said settlement, and which certificate shall contain a special location, describing as accurately as may be, the land so contemplated to be included in his said certificate, a duplicate of which said certificate shall be made out by the clerk, and delivered to the claimant, who shall pay the said clerk one shilling therefor. But no provision contained in this act shall authorise the appropriation of any salt spring, silver or lead mine, together with one thousand acres of land around such spring or mine, including the same as near the centre of a square as may be.

Salt springs,  
mines, and mi-  
nerals excepted.

Sec. 2. *And be it further enacted*, That the person obtaining such certificate, shall within twelve months after the date thereof, upon producing the same to the register of the land office, and paying to the treasurer at the rate of forty dollars per hundred acres, be entitled to a warrant for the same, in which warrant shall be contained the location as specified in the certificate, for which warrant the proprietor shall pay to the register twenty-five cents.

Duty of persons  
obtaining certi-  
ficate.

State price.

Sec. 3. *And be it further enacted*, That the said warrant shall within twelve months from its date, be surveyed, the plat and certificate recorded in the surveyor's office, and returned to the register's office, and the usual fees paid, on which patents shall issue on the usual rules.

Warrant to be  
surveyed, and  
where.

Sec. 4. *Be it further enacted*, That no location or survey, which shall be made in virtue of this act, shall in its length exceed its breadth more than one-third, unless interrupted by prior claims only.

Shape of sur-  
veys.

Sec. 5. *And be it further enacted*, That in every case where conditional lines have been established between the claimants, those lines being so established shall forever thereafter remain and continue to be the true boundary between them, until altered by mutual consent; but where no such conditional line shall have been made,

Provisions re-  
specting condi-  
tional lines.

then, and in that case, a point to be determined half way between their said improvements, shall be the boundary between them.

1809.

Sec. 6. *And be it further enacted,* That should any person who has actually settled and resided, or who may hereafter settle and reside as required by this act, on any lands acquired by the treaty of Tellico; and shall not within twelve months after the passage of this act, or settlement aforesaid, obtain from the circuit court of his or her county, a certificate for the lands so settled upon, that it shall and may be lawful for any other person, who may have resided twelve months on any of the lands acquired by the said treaty of Tellico, at the expiration of the twelve months aforesaid, to give to such settlers, a notice in writing, and attested by two witnesses, notifying him or her, that should they fail of obtaining a certificate for the land so settled upon, by the fourth day of the second circuit court after the delivery of the said notice, and should the settler as aforesaid, fail to avail him or herself of the notice aforesaid, and obtain a certificate for the lands so settled upon, as is required by this act, that it shall and may be lawful for the person giving the notice as aforesaid, to apply to the next circuit court thereafter, and obtain a certificate in his or her own name, for the land described in the said notice: *Provided,* that a copy, or the original notice shall, at the time of applying for the certificate, be proven in court; and shall carry the said certificate unto grant, in the same manner as though by this act, he or she had been an actual settler; any thing in the act to the contrary notwithstanding.

Provisions respecting settlers

Sec. 7. *Be it further enacted,* That all the money which may be received into the public treasury under this act, within twelve months from its passage, shall be, and is hereby appropriated for the special purpose of procuring arms for the use of the militia of this state, and shall be kept apart to be thus applied, whenever the legislature may adopt measures for this purpose.

How money to be appropriated

This act shall be in force from and after the first day of April next.

1809.

## CHAPTER CLXXII.

*An ACT for the relief of John Fowler and the Heirs of George Ewing, deceased.*

Approved January 31, 1810.

This act authorised the issuing of some patents, to the emanation of which in the ordinary way, there were some legal obstructions.

## CHAPTER CLXXIII.

*An ACT authorising Turnpikes on the Roads leading from the State Road to Goose Creek Salt-Works.*

Approved January 31, 1810.

Preamble.

WHEREAS it is represented to the present general assembly, that the roads leading from the state road to the upper salt-works on Goose creek, as well as the road leading from the said state road to the lower, or Lankford's salt-works, on Goose creek, are very bad, and but few inhabitants living near the said roads; and it is deemed just that some aid should be afforded to the county of Knox, as well as to the county of Clay, to enable them the better to keep the said roads in repair; and it is deemed just that those who travel said roads, should contribute, in some measure, towards keeping the same in repair: therefore,

A Turnpike in Knox,

Sec. 1. *Be it enacted by the general assembly, That* the county court of Knox county, may, and they are hereby authorised and empowered to erect, at such place as the said court shall deem proper, a turnpike on the road that leads from Hale's old place, on the state road, to Goose creek upper salt-works: *Provided, however,* that the approbation and leave of the owner of the land where the turnpike is intended to be fixed, shall first be obtained and the tolls hereinafter allowed shall be collected and applied, from time to time, towards aiding the hands allotted under any order, or orders, of the court aforesaid, in clearing out and repairing the road aforesaid, in such manner as the said court shall, by their orders, from time to time direct.

A Turnpike in Clay.

Sec. 2. *And be it further enacted, That* the county court of Clay county, may, and they are hereby empowered to cause to be erected, a turnpike on the road leading from towards the counties of Madison and Lincoln to the lower lick, or Lankford's salt-works, at such place,

between the intersection of the said roads and the salt-works, as the court may deem proper: *Provided*, leave and consent of the owner of the land on which the turnpike is intended to be erected shall be first had; and the tolls hereinafter allowed, shall be collected and applied, from time to time, in the same manner, on the road last mentioned, as is directed by the preceding section; and the said county courts aforesaid, respectively, shall have full power and authority to make all orders and proceedings necessary for carrying into full effect the foregoing objects.

1809.

Sec. 3. *Be it further enacted*, That the tolls, at the turnpikes on the roads aforesaid, shall be as follows, to wit:

	CENTS.
For a waggon, team, and driver, -	50
For every horse, mare, or mule, not in a waggon, - - - - -	6 1-4
For every cart and team, - - - - -	25
For every yoke of oxen not in a cart, - - - - -	12 1-2

This act shall be and continue in force for two years from the passage thereof, and no longer.

#### CHAPTER CLXXIV.

*An ACT for the relief of the Heirs and Representatives of Matthew Lodge, deceased.*

Approved January 31, 1810.

This act authorised substituting an attested copy of a certificate for two hundred acres of land in place of the original, which had been lost.

#### CHAPTER CLXXV.

*An ACT to amend the acts regulating the Court of Appeals.*

Approved January 31, 1810.

Sec. 1. *BE it enacted by the general assembly*, That all process to be issued from the office of the court of appeals, shall bear test in the name of the clerk, and so much of every act as requires such process to bear test in the name of the chief justice, is hereby repealed.

Sec. 2. *And be it further enacted*, That each person hereafter commissioned a judge of the court of appeals, (the chief justice excepted) shall by his commission, be made a judge of that court in general terms, without spe-

1809. cifying whether second, third, or fourth judge, and shall take precedence from the date of their commissions respectively. So much of every act of assembly, as requires the commissions to express second, third, or fourth judge, shall be, and the same is hereby repealed.

#### CHAPTER CLXXVI.

*An ACT to amend and reduce into one the several acts of Assembly allowing a Salary to the Treasurer.*

Approved January 31, 1810.

Sec. 1. *BE it enacted by the general assembly,* That in lieu of the salary heretofore allowed the treasurer of this commonwealth, he shall annually receive from the public treasury, the sum of nine hundred dollars, payable in equal quarterly instalments.

This act shall be in force from and after its passage.

#### CHAPTER CLXXVII.

*An ACT to amend the act establishing County Courts.*

Approved January 31, 1810.

It is probable the legislature meant to refer to the act of 1796, Volume I, page 373.

Cases in which a majority is necessary. Sec. 1. *BE it enacted by the general assembly,* That from and after the passage of this act, when the several county courts in this commonwealth shall proceed to lay their county levies, make an order to build a bridge across any water course, or erect any public building, that it shall be necessary for a majority of all the justices of the peace, then in commission for such county, to be present, and a majority of those who are present concur in laying, and building the same, and a majority of all the justices in commission, shall also be present when any claims are liquidated, or certified against said county, for building or erecting any bridge, or public buildings as aforesaid, and no claim shall be allowed, without a majority of those present concurring.

Clerk's duty in noting absences. Sec. 2. *And be it further enacted,* That whenever a court shall sit for the purpose of laying the county levy, or as a court of claims, the clerk shall note down the names of those justices, and when any justice shall leave the bench, the clerk shall note down such absence.



Sec. 3. *And be it further enacted*, That the several county courts within this commonwealth, are hereby authorised and permitted to lay a county levy, covering the amount of claims against such county, at the time of laying such levy, or which it is known will become due under engagements for public buildings, by the time said levies are to be collected, and accounted for, by the several sheriffs, or collectors, adding a reasonable overplus for probable delinquents, but shall not be permitted to raise funds or depositums over and above such reasonable calculations.

1809.

Duty of court  
in laying levy  
and regulations  
respecting the  
same.

## CHAPTER CLXXVIII.

*An ACT establishing an Election Precinct in the County of Montgomery.*

Approved January 31, 1810.

WHEREAS it is represented to the present general assembly, that a large and respectable portion of the citizens of Montgomery county, are in effect deprived of the exercise of their constitutional right of suffrage, by their remote situation from the seat of justice in said county: for remedy whereof,

Sec. 1. *Be it enacted by the general assembly*, That from and after the passage of this act, all that part of the county of Montgomery included in the following bounds, to wit: Beginning on the line of Bourbon county where the same crosses Hinkston; thence up Hinkston to the mouth of Lane's branch; thence a straight line to Flat creek, at the upper end of Alexander M'Intire's farm, now occupied by Original Young; thence a direct line to a point on Stepstone creek, one and a half miles above the mouth thereof; thence in a direct line to little Slate creek, so as to include the farm of John Jouitt in the precinct; thence a direct line to where the state road crosses Black water; thence down Black water to the mouth; thence down Licking to the Nicholas line; thence with Nicholas line to the Bourbon line, and with that line to the beginning, shall form an election precinct, to be denominated "The Slate Precinct."

Sec. 2. *Be it further enacted*, That elections in said precinct, shall be holden at the house of James Young, on Flat creek, in the same manner, and subject to the same laws, rules and regulations as govern other elec-

1809. tions in precincts; and the voters residing in said precinct, shall vote therein, and not elsewhere.

Sec. 3. *Be it further enacted*, That the county court of Montgomery, at their term at which they appoint judges and a clerk to attend the elections at the court-house, shall also appoint judges and a clerk to attend the respective elections in said precinct, who shall execute the duties assigned them, under the existing laws regulating elections: and the sheriff of the said county of Montgomery shall, by himself or deputy, attend the elections to be holden in said precinct.

Sec. 4. *Be it further enacted*, That the sheriff attending the respective elections at the court-house of said county and the said precinct, shall meet at the court-house, on the Saturday next succeeding the commencement of each general election, and at the same place, on the fourth day, inclusive, succeeding the commencement of any election, held by virtue of a writ of election; and having so met in either case, to compare and add the respective polls, and join in a certificate or certificates to the person or persons elected.

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#### CHAPTER CLXXIX.

*An ACT for the relief of Charles Kelsoe.*

Approved January 30, 1810.

He had been Sheriff of Harrison county. This act authorised him to return his delinquent list, which he had failed to do.

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#### CHAPTER CLXXX.

*An ACT giving further time to redeem Lands sold under the Revenue Laws.*

Approved January 31, 1810.

*BE it enacted by the general assembly*, That the further time of one year, from the passage of this act, be allowed to non-residents, whose lands were, in 1807, stricken off to the state, by the Register, for the non-payment of the taxes, interest and costs due thereon, to redeem the same, under the rules and regulations prescribed in the act, entitled "an act providing for the redemption of lands sold for taxes," passed in 1806.

## CHAPTER CLXXXI.

1809.

*An ACT to regulate proceedings in Suits at Law and in Chancery.*

Approved January 31, 1810.

As to the acts repealed by the 35th section of this act, the act of 1808 will be found in Vol. III, page 501; the act of 1796, in Vol. I, page 502; the act of 1800, in Vol. II, page 401.

Sec. 1. *BE it enacted by the general assembly,* That All laws requiring a rule docket to be kept in the clerks' offices of the courts of this commonwealth, or which requires the taking of rules, or steps in causes in clerks' offices on the rule days, or on the rule docket preparatory to the trial thereof, shall be, and are hereby repealed.

Sec. 2. It shall be the duty of the plaintiff or plaintiffs in all actions at common law, to file his, her or their declaration before the issuing of the original writ; but nevertheless, original writs and mesne process, may be sued out previous to filing the declaration, subject to the regulations hereinafter mentioned.

Sec. 3. Original and mesne process against a defendant or defendants, in actions at common law, shall be returnable to the first day of the term next after they issue.

Sec. 4. Original and mesne process against a defendant or defendants, in chancery suits, shall be returnable to the first day of the next succeeding term, unless they issue in term time, in which case they may be made returnable to any day of that term.

Sec. 5. If in any suit at common law, or in chancery, the process shall not be returned executed on the return day, the clerk may issue an *alias pluries*, or other process, without an order of the court therefor.

Sec. 6. It shall be the duty of every sheriff, or other officer, who executes original or mesne process on a defendant, to insert in his return the time of executing such process; but should he fail to return the time of executing such writ, it shall not impair the return of executed: but such sheriff or other officer shall be fined by the court to whom such process may be returnable, for such failure, a sum not exceeding ten dollars, on the motion of any person who may be party to the suit, such officer having had ten days notice of the time of making such motion; and such sheriff, or other officer, shall also be liable to the action of any person aggrieved by such failure.

1809. **Sec. 7.** Where process requiring bail shall be executed, it shall not be necessary for the sheriff or other officer executing such writ, to take an appearance bail bond as heretofore required by law; but in lieu thereof he shall take from the bail an endorsement on the writ, shewing the name of the bail, and for whom the bail was entered; which endorsement shall be signed by the bail and be in substance as follows: "I, (or we) A B, do hereby acknowledge myself (or ourselves) special bail for the within named C D, in the suit named in the within writ: Witness my hand (or our hands) this — day of — A B." Which shall have the force of a recognizance of special bail, and as such shall be obligatory on the bail, their heirs, executors and administrators, jointly and severally. The giving such bail shall not be considered an appearance in the suit.

**Sec. 8.** So much of every law as allows a fee to a sheriff or other officer, for writing or taking an appearance bail bond, shall be and is hereby repealed.

**Sec. 9.** If the plaintiff or plaintiffs shall not be satisfied with the sufficiency of the bail so taken, he may at the term to which the writ is returnable, or at the next term thereafter, if in the mean time final judgment be not given in the cause, object to the sufficiency of the bail, provided reasonable notice of the objection be given to the officer to whom such writ was directed; and the court shall thereupon hear and determine the objections to the sufficiency of the bail as heretofore.

**Sec. 10.** *Provided however,* That if a notice for the purpose above mentioned shall be adjudged insufficient; the court when they determine its insufficiency may allow the plaintiff until some day in the next term to give another notice and make his objections to the bail; provided in the mean time final judgment be not entered.

**Sec. 11.** If the bail be adjudged insufficient, and other good bail approved of by the court be not entered, the bail so objected to shall not thereby be discharged. And if the plaintiff shall proceed to judgment against the bail so adjudged insufficient, and the demand be not satisfied by the return of the first *feri facias* against the bail, the sheriff or other officer shall be liable to the plaintiff for the amount of his demand and all cost of suit; which may be recovered by action against the sheriff or other officer, or against him and his securities.

Sec. 12. It shall be the duty of every clerk, within 1809.  
 three weeks after the adjournment of his court, at each term, to make out his docket for the succeeding term, and therein docket all suits brought, which have not before been docketed: after which he shall, on issuing every original writ returnable to the succeeding term, enter the suit on the docket for that term. In making out his docket he shall set as many suits for each day as in his opinion will best suit the business of the court.

When clerk to make out his docket.

Sec. 13. He shall, on the application of either party, issue subpoenas for witnesses as soon as the cause is docketed, except in those cases in which no declaration is filed, or in which the writ hath not been issued ten days at least previous to the return day thereof.

Summonses for witnesses to issue.

Sec. 14. All actions at common law shall stand for trial at the term to which the process is returned executed: *Provided however*, if it shall not appear by the return of the officer, that the process was executed ten days before the return day, the cause shall be continued until the next term, unless both parties consent to a trial.

Action at common law when to stand for trial.

Sec. 15. If the suit be brought previous to the filing of the declaration, the plaintiff or plaintiffs shall not have a right to demand a trial until the term succeeding the one in which the declaration may be filed, and shall moreover pay all costs previous to the filing it. In suits thus brought, the plaintiff or plaintiffs shall file a declaration on the calling of the cause; or, on failure, the suit may for that cause be dismissed.

When suit brought previous to filing declaration.

Sec. 16. The defendant or defendants shall file his, her or their plea or pleas, on or before the day to which the cause is docketed at the first term at which the cause stands for trial; and on failure, shall not thereafter be permitted to file any plea to the jurisdiction of the court, nor in abatement, nor to file a special demurrer to the declaration.

Pleas when to be filed.

Sec. 17. On the calling of a common law suit, if a plea or pleas have not been filed, the defendant or defendants shall plead, and the plaintiff or plaintiffs reply, and the defendant or defendants rejoin, and so on, until the issue or issues of law or fact be made up, and a trial shall thereupon be had, and if either party fail thus to complete the issue or issues, the court may enter judgment against him or them for such failure: *Provided however*, that the court may, for good cause shewn, allow

Issues, when & how to be made up.

1809. either party a further day in that or the next succeeding term, to plead, reply, or the like, such party paying the costs occasioned by the postponement: *Provided however*, that nothing herein contained shall be construed to prevent either party from filing proper pleadings before the calling of the suit.

Amendments may be made. Sec. 18. The court may give leave to amend the declaration, or other pleadings, as heretofore, except that such amendment shall be filed immediately on obtaining leave to amend, unless for good cause the court give a further day. If the amendment be in matter of form, the trial shall not be delayed in consequence thereof; if it be in matter of substance, the opposite party may immediately answer thereto, upon which the suit shall proceed as if no amendment had been made, or he may, at his election, demand a continuance of the cause until the next term. The costs occasioned by amendments, shall be paid as heretofore. If the plaintiff amend his declaration, the defendant or defendants may immediately demur thereto, for special cause, although the time herein before mentioned for filing a special demurrer, shall have elapsed; but if the defendant or defendants demand a postponement of the suit, on account of such amendment, he, she or they shall not be permitted to file a special demurrer to the amended declaration.

Regulations respecting pleading in suits at law. Sec. 19. If in an action at common law, the plaintiff omit to take judgment against a defendant or defendants, for failing to plead, when by the foregoing provisions he might so take judgment, the defendant or defendants may, at any time before interlocutory judgment, plead any pleas, the filing of which is not, by this act, limited to the first term; and if the plaintiff or plaintiffs take an interlocutory judgment, on account of such failure, and a writ of enquiry, but if the writ of enquiry be not executed, the court may, in their discretion, on the motion of the defendant or defendants, at any time before the writ of enquiry be executed, set aside the interlocutory judgment, and permit a plea or pleas to the merits to be filed; but where a plea or pleas are filed, in either of the cases in this section mentioned, the plaintiff may wave his right of trial at that term, and have a general continuance of the cause.

Pleadings in chancery. Sec. 20. In suits in chancery, the defendant or defendants shall plead, answer or demur, on or before the first day of the term next succeeding the one to which

the process may be returned executed, and on the calling of the cause at such term, the complainant or complainants shall reply, and the defendant or defendants rejoin, and so on, if necessary, until the issue or issues of law or fact be made up; and if either party fail thus to complete the issue or issues, the court may enter a decree against him, her or them for such failure: *Provided however*, that if the complainant or complainants shall be called on to answer interrogatories contained in an answer of a defendant or defendants, the cause shall be continued, unless the complainant or complainants voluntarily answer at that term; and in case a suit be thus continued for an answer to interrogatories, the answers shall be filed on or before the first day of the next term, and the issue or issues shall be completed at such second term. If the issue be made up by bill, answer and replication, or the like, whereby depositions are to be taken, the cause shall stand for hearing at the term next after the issue is made up. If on a plea filed, an issue of fact be made up for trial by jury, the court shall appoint the time of trial. If an issue in law be made up by demurrer, it shall stand for argument at the term at which it is made up.

1809.

Sec. 21. The complainant or complainants may proceed to take depositions one month after the defendant or defendants against whom the depositions are to be read, are served with process. The defendant may proceed to take depositions one month after he files his answer.

Depositions in  
chancery when  
they may be taken.

Sec. 22. Attachments for not answering, shall issue by order of the court only. They shall be returnable at such time as the court may order.

Attachments in  
chancery.

Sec. 23. Exceptions to an answer may be taken at any time before the answer be replied to. The exceptions shall stand for argument at the term at which they are taken, without waiting for a better answer.

Exceptions to  
answer.

Sec. 24. If a plea or demurrer be overruled, in a case in which, by the course of chancery practice, the party might thereafter answer; or if exceptions to an answer be adjudged sufficient, the court shall in their discretion, considering the circumstances of the case, appoint a time in which the party shall file his answer; and on his failing to answer, may proceed as on a failure to answer in other cases, in the time directed by this act.

Answering after  
plea or demur-  
rer overruled.

1809. **Sec. 25.** In suits in chancery, either party may lodge his, her or their answer, replication, or other pleadings, with the clerk, in vacation. But the opposite party shall not be bound to notice such answer, replication, or other pleading, as filed, until the same be entered in court.

**Sec. 26.** In suits in chancery against absent defendants, orders requiring the appearance of the defendant or defendants, and publication in a newspaper, shall be had as heretofore. The publication in a newspaper shall authorise the complainant or complainants to proceed in the same manner as if process were returned executed, to the term at which the defendant or defendants may by such publication be required to enter an appearance: *Provided however*, that such absent defendant or defendants shall be permitted to open a decree in such cases, in the same manner as if this act had not passed.

**Sec. 27.** In chancery, after an appearance or subpoena executed, or advertisement as aforesaid, the amendment of the bill or other pleadings shall not require a new subpoena or publication.

**Sec. 28.** If a plaintiff at law or complainant in chancery shall, on the calling of his cause, fail to prosecute it, and the defendant shall also fail to appear, the court may in their discretion either enter a nonsuit against the plaintiff or complainant, or continue the cause.

**Sec. 29.** If from any cause the issue or issues be not made up at the time herein prescribed, the court shall possess the like power at each subsequent calling of the suit, until the issue or issues be completed, to compel the parties to complete them.

**Sec. 30.** The clerk shall endorse on all answers, pleas and other pleadings in suits at common law and in chancery, the time when filed, and shall enter on the order-book that such answer, plea or other pleading is filed; but it shall not be necessary to copy any answer, plea or pleading on the order-book.

**Sec. 31.** Nothing herein contained shall be construed to prevent the court from continuing a cause at any stage, for good cause shewn; nor shall any thing herein contained, be construed to prevent the court from giving either party in suits at common law or chancery, a further day upon good cause shewn, and at the costs of the appli-



cant, to file a declaration, plea, answer or other pleading :  
*Provided*, such leave doth not contravene the provisions  
 of the 16th, 18th and 19th sections of this act.

1809.

Sec. 32. Nothing herein contained shall be construed  
 to require any rule for a declaration, plea, answer, or  
 the like ; but judgments or decrees may be entered for  
 a failure, as is herein before prescribed, without any  
 such rule. Neither shall any thing herein contained be  
 construed to affect or alter the proceedings in suits by  
 petition and summons, nor to affect or alter the pro-  
 ceedings or evidence on motions to dissolve injunctions  
 or to discharge *ne exeats*.

No rules for  
pleading requir-  
ed.Proceeding on  
injunctions and  
ne exeat unal-  
tered.

Sec. 33. *Be it further enacted*, That no *supersedeas*  
 shall issue or be allowed on a writ of error to reverse  
 the judgment or decree of a circuit court, unless such  
 judgment or decree be final, and amounts, exclusive of  
 costs, to fifty dollars, or relates to a franchise or free-  
 hold.

Supersedeas,  
when not allow-  
ed.

Sec. 34. *Be it further enacted*, That it shall be the  
 duty of the sheriff, whenever hereafter original process  
 comes to his hands, to endorse upon said process the  
 time of its reception.

Sheriff to en-  
dorse on process  
time of recep-  
tion.

Sec. 35. The first, second, third and seventh sections  
 of the act approved the 23d day of February 1808, en-  
 titled "an act regulating civil proceedings in certain  
 cases," and the twelfth section of the act approved the  
 19th day of December 1796, entitled "an act to reduce  
 into one the several acts establishing courts of quarter  
 sessions and directing the proceedings therein," and the  
 first clause of the sixth section of the act approved the  
 18th day of December 1800, entitled "an act to amend  
 the law of proceeding in civil cases," shall be and are  
 hereby repealed : *Provided however*, that nothing herein  
 contained shall in any wise impair the validity of any  
 proceedings or any suit depending (at the time this act  
 shall take effect) under the act aforesaid passed in 1808.

Certain acts re-  
pealed.

Sec. 36. This act shall commence on the first day of  
 June next ; but nevertheless, in those courts wherein a  
 rule day or rule days shall intervene between the said  
 first day of June and the next succeeding term of such  
 court, the rule docket shall be continued and the steps  
 taken thereon as heretofore, until the first term after said  
 day. And at the first term of each court after the said  
 day, the causes on the respective rule dockets shall be by

Commencing  
clause.

1809. the clerk transferred to the issue docket ; and the courts may respectively take any steps, at that term, in causes so transferred, preparatory to their trial, but shall not proceed to try them at that term, unless by consent. But all such causes shall, after that term, be proceeded upon as if they had been brought under this act.

### CHAPTER CLXXXII.

*An ACT regulating the mode of proceedings in cases of forcible entry or detainer.*

Approved January 31, 1810.

Unlawful en-tries into lands and tenements prohibited. Sec. 1. *BE it enacted by the general assembly, That* no person shall make entry into lands and tenements, or other possessions whatsoever, but in case where entry is given by law ; and in such case, not with a strong hand, nor with a multitude of people, nor with any manner of force ; but only in a peaceable and easy manner, nor shall any who have entered in a peaceable manner hold the same afterwards with force.

And such detainers.

Justice on complaint to issue his warrant.

Form thereof.

Sec. 2. If any person shall act contrary to the provisions of the foregoing section, any justice of the peace of the county in which the possessions, or a principal part thereof, may lie, shall, on complaint made to him, issue his warrant to the sheriff of said county, or coroner, if the sheriff be interested, in substance as follows :

— County, sct. to the sheriff, or coroner, of — county : Whereas A. B. hath made complaint to me, J. P. a justice of the peace for said county, that C. D. and E. F. did on the — day of — forcibly enter into, or forcibly detain from the said A. B. one house and field, lying on the waters of —, in the county aforesaid, or other general descriptions of the possessions, which were in the peaceable possession of the said A. B. you are therefore in the name of the commonwealth of Kentucky, commanded to summon twelve good and lawful men, house-keepers of your county, to meet on the premises aforesaid, on the — day of —, to enquire into the forcible entry, or detainer aforesaid ; and give to the said C. D. and E. F. at least three days notice of the time and place of the meeting of the jury ; and have then there this writ.

Sheriff to give notice.

Sec. 3. The sheriff or other officer shall give to the defendants notice according to the directions of the war-

rant; which notice shall be given to each defendant in person; and no enquiry shall be made against any defendant who has not been notified as aforesaid.

1809.

Sec. 4. At the time appointed for holding the inquisition, the sheriff or other officer shall return on the warrant upon whom it hath been executed, and shall deliver the same, together with a pannel of the jury, to any justice of the peace of the county who may attend; whereupon the justice, whether the defendants be present or departed, shall, on the premises, or some place convenient thereto, within his discretion, administer an oath to the jurors, in substance as follows: You, and each of you, shall well and truly enquire into and return whether the defendant or defendants be guilty of the forcible entry or detainer complained of in the warrant in this cause, so help you God.

Sheriff to return the warrant.

Proceedings thereon.

Form of the jury's oath.

Sec. 5. Such justice shall superintend the taking of the inquisition, swear witnesses, decide incidental points of law which may arise and be referred to him by either party, preserve the peace, enforce the rules of decorum, and punish according to law, contempts of his authority.

Duty of justice.

May punish contempts.

Sec. 6. The jurors, after hearing the evidence, shall by their inquest say whether the defendants, or either of them, be guilty or not guilty of the forcible entry or detainer complained of, and shall return their inquest, signed by one of their body, to the justice of the peace.

Duty of the jury.

Sec. 7. Upon the return of the inquest, the justice of the peace shall enter a judgment according to the inquisition, either for the plaintiff, in substance, that he have restitution of the premises aforesaid, and recover of the defendant his costs in this behalf expended; or for the defendants, in substance, that they recover of the plaintiff their costs in this behalf expended; or for the plaintiff against some of the defendants, and for the other defendants against the plaintiff, where some are found guilty and others not guilty.

Justice to render judgment.

For plaintiff.

For defendant.

Sec. 8. If the party against whom the inquisition is found, shall not file a traverse of the inquisition with the justice, on or before the third day after the finding of the inquest, the justice shall, on request, issue his execution for the costs; and if the inquisition be in favor of the plaintiff, he shall also issue his warrant of restitution, in substance as follows: — County sct. To the sheriff or corener of — county: Whereas C. D. and

If traverse not taken, execution for costs may issue.

And writ of restitution.

Form thereof.

1809. E. F. have by an inquisition taken before me, J. P. a justice of the peace for said county, been found guilty of a forcible entry, or detainer, in one house and field, lying on the waters of —, in the county aforesaid, or other general description of the possessions, to the injury of A. B. you are therefore, in the name of the commonwealth of Kentucky, commanded that with the power of the county, if necessary, you put the said A. B. in the possession of said premises, and make return within — days to me, how you have executed this warrant. Given, under my hand this — day of —, J. P.

Justice to file the papers. Sec. 9. The justices of the peace shall carefully preserve all papers, records and proceedings relating to the cause, except where he transmits them to the clerk as herein after directed, and shall deliver to any person requiring it, a transcript thereof, such person paying him therefor two cents for every twenty words in such transcript.

May give a copy. His fee therefor. Sec. 10. If either party conceive himself aggrieved by the finding of the jury, he may file a traverse thereof with the justice, within three days next after the finding aforesaid, in substance as follows: A. B. against C. D. on a writ of forcible entry, or detainer. The

Form thereof. plaintiff, or the defendant, saith that the inquisition returned in this cause is not true: wherefore he prays that proceedings thereon may be staid until the same can be tried according to law, (A. B. or C. D.) and shall also within the same time, before said justice, give

To give bond. bond with sufficient security, to be approved of by the justices, to his adversary, in a reasonable penalty, to be fixed by the justice, with a condition in substance as follows: The condition of the above bond is such, that

Penalty condition. whereas an inquisition of forcible entry, or detainer, in which A. B. was plaintiff, and C. D. and E. F. were defendants, was found before —, a justice of the peace for said county, in favor of said A. B. on the — day of —, which inquisition hath been traversed by the said C. D. and E. F. Now should the said C. D. and E. F. pay to said A. B. all costs of suit, and all damages that may be sustained by said A. B. in consequence of said traverse, if it be not prosecuted with effect, then this obligation to be void; upon giving which

Proceedings to be stayed. bond, the justice shall stay all further proceedings on the inquisition, and return the whole of the papers and

proceedings, or a fair transcript thereof, to the office of the circuit court for said county, within ten days thereafter.

1809.

Sec. 11. The clerk shall docket the traverse next after the pleas of the commonwealth; it shall stand for trial as docketed; the defendant shall join issue on the traverse; it shall be tried by jury, and judgment be given on the verdict, as in other cases: *Provided however*, that nothing herein contained, shall be construed to prevent the court from giving judgment against either party for default, nor from deciding any matter of law properly brought before them, as in other cases.

Traverse to be filed, docketed, and proceedings thereon.

Sec. 12. After a cause is returned to the circuit court, executions for cost, or for restitution, shall issue from the office of that court, according to the judgment in the cause.

Upon a judgment therein in court the executions issue therefrom.

Sec. 13. The court before whom such cause may be depending, or any judge thereof, in vacation, may make any order restraining waste or destruction of the premises, and punish by fine and imprisonment, or either of them, a disobedience of such order.

Power of the circuit courts pending the traverse.

Sec. 14. The proceedings under a writ of forcible entry and detainer, shall not be a bar to an action of trespass, or for waste, or for rent, or for *mesne* profits.

Proceedings under this act no bar to actions at common law for waste, &c.

Sec. 15. No inquisition of forcible entry, or forcible detainer, shall be taken at any time after two years from the forcible entry or detainer complained of, nor shall restitution be awarded upon an inquisition of forcible entry or detainer, where the defendant hath had peaceable possession for two whole years, next before the finding of the inquisition, except in the cases hereinafter provided for.

Limitation.

Sec. 16. If a tenant at will, after the expiration of the will of his landlord, or other tenant, after the expiration of his term in the premises, refuse to restore the possession to his landlord, he shall be adjudged guilty of a forcible detainer, and may be proceeded against accordingly: *Provided however*, that if the tenant deny that he entered the premises as tenant to the plaintiff, or to those under whom he claims, he shall not be adjudged a tenant within the meaning of this act, unless the plaintiff shall satisfactorily prove, that the defendant obtained the possession as tenant to the plaintiff, or to the person, or persons, under whom the plaintiff holds, and that the tenant holds over.

Proceedings *vs.* lessee's holding over.

1809.  
What deemed a forcible entry or detainer.

Sec. 17. The forcible entry intended by this act is, and shall be, any entry with or without multitude of people, against the will, or without the assent, of the person or persons who, at the time of such entry, have the possession in fact of the premises into which such entry may be made; which possession in fact, when had, and during the time of its continuance, is and shall be construed to extend to the limits of the premises so possessed.

Other statutes repealed. Sec. 18. All acts and parts of acts, which are within the purview of this act, shall be, and are hereby repealed.

Justice's fees. Sec. 19. *And be it further enacted*, That the justice of the peace attending for taking an inquisition of forcible entry or detainer, as aforesaid, shall be entitled to have, and receive from the party complaining, one dollar for every day he shall necessarily attend for taking the same, which shall be taxed in the bill of costs, in cases where the plaintiff shall succeed.

Sheriff's fees. Sec. 20. *And be it further enacted*, That the sheriff, or coroner, who shall summon and attend the jury in any case of forcible entry, or forcible detainer, is, and shall be allowed, and paid by the plaintiff, or plaintiffs, the sum of four dollars in full for the services aforesaid; and for summoning witnesses and other services, to be by him rendered under this act, he shall be allowed the same fees, as is now allowed by law for similar services in the circuit or county courts; and the witnesses who shall attend, and give evidence on the trial of any case of force as aforesaid, shall be, and are allowed fifty cents each, for his or her daily attendance, to be paid by the party requiring such attendance, and to be taxed as costs, where the nature of the case requires, and will justify it.

Witnesses' fees.

#### CHAPTER CLXXXIII.

*An ACT concerning the removal from office by address, and the expulsion of Members of the Legislature.*

Approved January 31, 1810.

The person preferring charges must give notice to the accused. Sec. 1. *BE it enacted by the general assembly*, That when any person shall intend to make application to the legislature, for the removal of any judge of any superior or inferior court, or any justice of the peace, by the ad-

dress of two thirds of the members to the governor, agreeably to a provision in the constitution for that purpose, or shall intend to prefer any charge or charges against any member of either branch of the general assembly, with a view to the expulsion of such member, the person so intending, shall, at least thirty days before the meeting of the legislature, notify such judge, justice of the peace, or member of the assembly, of such intention by a notice in writing signed by such person, attested by two witnesses and specifying fully and distinctly, the cause or causes, upon which the application is intended to be founded, to be delivered to the party, or left at his usual place of abode: *Provided*, that if it shall appear that the cause, or causes, upon which the application is founded, shall have occurred within the said time of thirty days before the meeting of the legislature, in such case it shall be sufficient that reasonable notice, to be judged of by the house, shall have been given.

1809.

Containing the causes of such application.

*Provido.*

Sec. 2. *Be it further enacted*, That either the person who intends to make such application, or the person against whom the information is to be preferred, may take depositions before any two justices of the peace in this commonwealth, to be read upon the investigation of such charge or charges: *Provided*, that the opposite party shall have reasonable notice in writing, of the time and place of taking such depositions.

Either party may take depositions.

Sec. 3. *Be it further enacted*, That the application shall be made by petition signed by such person, stating the fact or facts, on which it is founded, and accompanied by proper depositions to support the charge or charges, and shall conclude by praying that such judge, justice of the peace, or member, as the case may be, may be removed or expelled; which said petition shall, if received, be referred to a committee selected for that purpose, who shall have power to send for papers and records for their further information, and at their discretion, may give leave to the parties to take additional depositions, under such restrictions and limitations, as to them may seem just, which committee shall take the whole matter under consideration, and report their opinion thereon to the house.

Application must be by petition.

And praying for removal.

When received shall be referred to a select committee.

Sec. 4. If the house to whom the application is made, upon considering the report of the committee, shall be of opinion that a removal or expulsion ought not to take

The house shall, upon their report decide.

1809. place, and shall decide that there was not probable cause for commencing the prosecution, and also decide by a majority, that the applicant ought to pay the costs, the person preferring said petition, shall be liable for all the costs that may accrue to the person acquitted: the costs shall be taxed by the clerk of the house, who shall be governed in taxing the same by the laws regulating the costs of a suit in the circuit court; the clerk of the house shall certify the amount, and if it shall not exceed five pounds, the person acquitted, may recover judgment by warrant before any justice of the peace in this commonwealth, and if the amount shall exceed that sum, he may recover the same by motion in any circuit court, ten days notice in writing being given to the opposite party of such motion.

And may award costs. Which shall be taxed and certified by the clerk of the house. Mode of recovery.

Sec. 5. *Be it further enacted*, That if any person or persons, shall give notice, and take any deposition or depositions in pursuance of the provisions of this act, and shall afterwards fail to prosecute his charges so as to bring such accusation before the legislature, in all such cases, he or they shall be subject to all legal costs recoverable as heretofore by this act directed: *Provided*, that nothing in this act shall be so construed as to prevent an inquiry being instituted by either branch of the legislature in any case in which such inquiry may be deemed necessary.

Penalty on failure to prosecute after giving notice. Proviso.

This act shall be in force from its passage.

#### CHAPTER CLXXXIV.

*An ACT to amend an act entitled "an act providing for the recovery of monies fraudulently drawn from the Treasury."*

Approved January 31, 1810.

The act amended, is the 85th chapter of this volume.

Sec. 1. *BE it enacted by the general assembly*, That the witnesses in behalf of the commonwealth, which have attended, or may hereafter attend, on a suit depending in the Montgomery circuit court, the commonwealth against James S. Megowan, or on a suit in the Mason circuit court, the commonwealth against John Kercheval, shall be allowed the same fees as witnesses in other cases are allowed by law, to be paid out of the public treasury.



Sec. 2. *And be it further enacted,* That the clerks of the aforesaid circuit courts respectively, shall certify the cost accruing by virtue of this act to the auditor, who shall issue his warrant on the treasurer for the payment thereof.

1809.

This act shall be in force from and after its passage.

#### CHAPTER CLXXXV.

*An ACT to amend the several acts of Assembly concerning Clerks of Courts in this Commonwealth.*

Approved January 31, 1810.

Sec. 1. *BE it enacted by the general assembly,* That so much of all and every act of assembly as allows a compensation from the commonwealth to clerks of courts for examining or certifying the commissioners' books, or for other services under the revenue law, shall be, and they are hereby repealed.

Allowances to clerks under revenue law repealed.

Sec. 2. *And be it further enacted,* That so much of every act of assembly as makes an allowance from the commonwealth to clerks of courts for books, stationary, or other office articles, shall be, and the same are hereby repealed.

Allowance for books and stationary repealed.

Sec. 3. *And be it further enacted,* That it shall be the duty of each clerk of a court, at his own proper costs and charges, to furnish the necessary books, well bound, presses, stationary and other office articles, subject, however, to the following modification:—That for the necessary well bound books, and necessary presses furnished as aforesaid, each clerk may from time to time, on oath, exhibit his account, shewing each item and its price, and the court being satisfied of the correctness thereof, may order it to be certified to the auditor of public accounts, which being audited shall be paid out of the public treasury.

Clerks to furnish articles.

Modification.

Sec. 4. *And be it further enacted,* That so much of every act as allows a fee for any rule or step, taken on the rule docket in the clerk's office, shall be repealed from and after the first day of August next, except as to the clerk of the general court, and shall take effect as to him on the first day of December next.

Law allowing fees for rules repealed.

Sec. 5. *Be it further enacted,* That it shall not be lawful for any clerks of courts of this commonwealth, to charge a fee for a copy of an order, or for entering spe-

Fees regulated.

1809.



cial bail, or for a copy of any paper filed in said suit, or of any proceedings therein had, unless said copy shall have been required, and shall have been made out for the party against whom the said charge is made, or for his counsel.

Fees further regulated respecting the filing of papers.

Sec. 6 *Be it further enacted*, That no clerk in this commonwealth shall be allowed more than the sum of eighteen cents for filing all the papers (other than depositions) of the plaintiff or plaintiffs in any suit, and the same for filing all the papers of the defendant or defendants in any suit, except depositions; nor shall any fee be charged for filing papers against any party, unless he or they shall file some paper or papers as exhibits in the cause, other than depositions, the pleadings and process, and the papers referred to, and made a profert of in the pleadings; nor shall the charge for filing papers be allowed more than once against each party in any cause; nor shall any clerk be allowed a greater sum than fifteen cents for filing all the depositions of the plaintiff or plaintiffs in any cause, and the same for filing all the depositions of the defendant or defendants in any cause; the said charge to be made but once against each party, and not for each separate deposition or set of depositions; nor shall the said charge be made against any party, unless a deposition or depositions are actually filed by such party, his counsel, or some other person duly authorised to file the same.

Further regulations respecting fees on replevin bonds, &c.

Sec. 7. *Be it further enacted*, That when an execution shall be issued by any clerk in this commonwealth on a replevin or forthcoming bond, no fee shall be charged for a judgment, taxing costs or filing bond or papers, but the fee for the whole services of such clerk, in issuing such execution, shall be thirty-three cents, and no more.

Further regulation of fees as to witnesses attendance.

Sec. 8. *Be it further enacted*, That it shall be the duty of all clerks in this commonwealth, when entering the attendance of witnesses (which shall not be done at any term until the suit is either tried or continued) to make but one order for all the witnesses who shall have attended on behalf of the plaintiff or plaintiffs, or so many of them as shall attend to claim their attendance at any one time; and but one order for all the witnesses who shall have attended on behalf of the defendant or defendants, or so many of them as shall have attended to claim their attendance at one time; for which orders the clerk shall receive the fee heretofore allowed by law.

Sec. 9. *Be it further enacted*, That whenever any clerk in this commonwealth shall make out any transcript of a record, or a copy of any paper, judgment, execution, or other matter in his office, it shall not be lawful to charge a fee for the attestation, or attesting certificate of the clerk, but the same shall be considered as satisfied by the fee allowed for the copy or transcript.

1809.

No fee to be charged for certificate.

Sec. 10. *Be it further enacted*, That no clerk in this commonwealth shall hereafter receive more than one and one half cent for every twenty words, in entering every decree at large, or for making out a complete record, or for a copy or transcript of the same, or for a copy of a deposition, or for any other paper for which no specific fee is given.

One and one half cent for entering decrees and complete record or for copies.

Sec. 11. *Be it further enacted*, That no clerk in this commonwealth, for recording a deed of bargain and sale, taking the acknowledgment or proof thereof, certifying the same, and recording such certificate, shall be allowed more than one dollar, unless said deed contains more than one tract, in which case a fee of twenty-five cents shall be allowed for each additional tract: *Provided however*, that no additional fee shall be allowed where there is a conveyance of more than one tract, which tracts are described by their numbers, as in the case of town lots, and not by their boundaries.

Fees regulated respecting deeds

Sec. 12. *And be it further enacted*, That if any clerk of any court of this commonwealth, shall hereafter either charge or demand, or receive, any greater or other fees than are now allowed by law, he shall be fined in a sum not less than one dollar, nor more than forty, for each item, or any part thereof, illegally or improperly charged, the one half to the party against whom such charge is made, and the other half to the county levy, recoverable by motion before the court of which he is clerk, being first summoned to shew cause to the contrary, or a rule of court to that effect, with reasonable time given, being first made subject to a continuance, for good cause shewn, as other suits or motions.

Fine.

Sec. 13. *And be it further enacted*, That all acts or parts of acts coming within the purview of this act, shall be and the same are hereby repealed: *Provided however*, that nothing in this act contained shall be so construed as to legalize or render valid any charges for clerks' fees heretofore illegally or wrongfully charged.

Repealing clause.

Proviso.

1809.   
 {   
 Duty of clerks   
 in making out   
 complete re-   
 cords, penalty   
 for failure, and   
 how recovered.

Sec. 14. *And be it further enacted.* That when a full and complete copy of a record shall be required, the clerk whose duty it is, shall, by himself or his deputy, make it out in a plain hand writing, with marginal notes, and paged, with the sheets fastened together; and in cases where he shall certify it to be full and complete, he shall take due care that neither improper additions or omissions hath taken place; and if any clerk shall fail in his duty herein, he shall lose the fee for making out the same, and be liable to pay to the party charged any sum not exceeding four times the amount of the fee or fees so charged, recoverable by motion to the court of which he is clerk, on giving the clerk reasonable notice of the time of making the motion; and in transcript filed in an appeal or writ of error, the court of appeals may, on application, cause their clerk to furnish their certificate of the amount of improper matter certified as record without being so, which may be used as evidence on motion against the clerk as aforesaid: *Provided however,* that nothing herein contained, or any proceedings under this act, shall be construed to take from any person or persons aggrieved, his, her or their action, for any injury he, she or they shall have sustained, saving a due deduction for any money recovered on motion as aforesaid.

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#### CHAPTER CLXXXVI.

##### *An ACT for the appropriation of Money.*

Approved January 31, 1810.

This is the ordinary appropriation bill.

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#### CHAPTER CLXXXVII.

##### *An ACT for the relief of Amos Loney and Thomas Scott.*

Approved January 31, 1810.

Amos Loney had a survey executed for 1400 acres of land, which was recorded in the proper office, but the original was not signed by the surveyor, or any of his deputies, and the surveyor had died. This act authorized an attested copy from the surveyor's record to be returned to the register's office in lieu of an original. It directed the auditor to issue a warrant for a small sum in favor of Thomas Scott; on what consideration, it is not said.

DECEMBER SESSION, 1810.

CHAPTER CLXXXVIII.

*An ACT altering the Chancery Term of the Fayette Circuit Court in the year 1811.*

1810.

Approved December 17, 1810.

It was directed to be held on the first Monday in August instead of the fourth Monday in January.

CHAPTER CLXXXIX.

*An ACT establishing the Lebanon Academy in the County of Christian.*

Approved December 17, 1810.

Sec. 1. *BE it enacted by the general assembly, That* Fines Ewing, Ephraim M'Clean, Samuel Moore, Young Trustees.  
Ewing, Daniel Benham, Robert Coleman and David Barty, gentlemen, shall be, and are hereby constituted a body politic and corporate, to be known by the name of the trustees of the Lebanon academy: and by that name, shall have perpetual succession and a common seal, with power to change or alter the same at pleasure: and as a body corporate, shall be authorised to exercise all the powers and privileges, that are now enjoyed by the trustees of any academy or seminary of learning in this state. And on the death, resignation, or other disqualification of any of the trustees aforesaid, or their successors, a majority of the remaining trustees, shall fill such vacancy; and the person so appointed, shall be vested with the same power and authority, as if specially named by this act: and by the name and style of the trustees of the Lebanon academy, may sue and implead, and be sued and impleaded, in any court in law or equity, or before any tribunal having cognizance of the same. <sup>Incorporated</sup> <sup>Their powers.</sup>

Sec. 2. The said trustees, and their successors, shall have power in their corporate capacity, to purchase, or receive by donation, any lands, tenements, hereditaments, monies, rents, goods and chattels, and to hold the same by the name aforesaid, to them and their successors forever, for the use of the said academy; and to <sup>May receive donations.</sup>

1810. sell, alien, or transfer, any such lands, goods and chattels, and apply the proceeds to the benefit thereof.

Regulations respecting the meetings. Sec. 3. The person first named herein, or in his absence or refusal to act, the next shall notify the time and place, for the first meeting of the trustees; and on the attendance of a majority thereof, they shall appoint a Clerk & chair- chairman and clerk, who shall severally take an oath, to man appointed. be administered by some justice of the peace, well and truly to execute the duties of their office; and thereafter, the board may be called by the chairman or any two of the trustees. The said trustees shall have power to ad- Further powers of trustees. journ from day to day, to make and ordain such by-laws, rules and ordinances, as they may deem proper, not inconsistent with the laws of this commonwealth; and moreover to fix on a proper place for erecting the buildings of the said academy: *Provided*, That a majority of all the trustees, shall be necessary to attend on the making any contract, by-laws, or fixing the permanent seat of the same.

Tutors, &c. to be employed. Sec. 4. A majority of said trustees shall have power to engage and employ a competent number of tutors and professors to the said academy, to fix their salaries, and the salary of their clerk, as also the terms of tuition; and on the misconduct of any tutor, professor, or student, May be expelled. may dismiss or expel such tutor, professor, or student, from the said academy.

#### CHAPTER CXI.

*An ACT directing the Auditor of Public Accounts to suspend the issuing of any Warrant to any Clerk within this Commonwealth for his services in copying the Commissioners' Lists of Taxable Property, until he is further directed by law.*

Approved December 17, 1810.

Had its effect.

#### CHAPTER CXCI.

*An ACT for the relief of Joseph Reed.*

Approved December 17, 1810.

A grant for head-right land had been issued on a wrong certificate. This act directed the register to correct the patent.

## CHAPTER CXCI.

1810.

*An ACT for the benefit of Matthew Singleton.*

Approved December 17, 1810.

He was indigent and insane, in consideration of which this act released him from the balance of the state price on 245 acres of land.

## CHAPTER CXCI.

*An ACT incorporating the Directors of the Winchester Library Company.*

Approved December 27, 1810.

Sec. 1. *BE it enacted by the general assembly, That* <sup>Directors.</sup> William N. Lane, James Simpson, James Clark, Chilton Allen, and Samuel Hanson, and their successors, duly elected or appointed, in manner herein after directed, be and they are hereby made, declared and constituted a corporation and body politic, in law and in fact, to have continuance forever, by the name, style and title of the <sup>Style.</sup> Directors of the Winchester Library Company.

Sec. 2. *And be it further enacted,* That the said corporation, by the name and style aforesaid, shall be here- <sup>Legal capacity of the corporation.</sup> after forever capable in law to sue and be sued, plead and be impleaded, in any court or courts, or other places, or before any judge or justice within this commonwealth, or elsewhere, in all manner of suits, actions or complaints, of whatsoever kind or nature they may be, in as full and effectual a manner as any other person or persons, bodies politic or corporate, may or can do.

Sec. 3. *And be it further enacted,* That all and singular the sums of money, books, goods and chattels, which may be subscribed, given, granted or devised to the said company, or to any person or persons for the use thereof, shall be vested in and confirmed to said corporation; and that the said corporation may take and receive any sum or sums of money, or any goods, chattels or other effects, of what kind or nature soever, which may be given, granted or bequeathed unto them, by any person or persons, bodies politic or corporate, capable of making such gift or bequest; such money, goods, chattels or other effects to be laid out and disposed of in the purchase of books, maps, charts, drawings for the use and benefit of said company, agreeably to the intention of the donors or subscribers. <sup>What funds may be acquired and vested in the corporation.</sup> <sup>Appropriation of funds raised.</sup>

1810. *Sec. 4. Be it further enacted,* That the said corporation shall have full power to make and use a common seal, with such device and inscription as they shall think proper, and the same to break, alter and renew at pleasure ; to appoint a treasurer, secretary and librarian ; to assign them their duties, fix their compensation, and remove him or them from office and appoint another or others in his or their place or places, as often as they shall think fit ; to make and execute such by-laws and ordinances as may be deemed useful to the institution ; and the same to alter, amend or abrogate at pleasure ; to fix the price of shares, and the annual contributions on each share ; to direct how transfers may be made and certified, and judge of the persons proper to be admitted as shareholders ; to procure by purchase, rent or otherwise, a suitable place for keeping the library ; to appoint the times for keeping the library open, and for taking out and returning books ; to fill up the vacancies that may happen in their number between two half yearly meetings ; to levy and collect fines and forfeitures, and to determine upon and transact all matters appertaining to the said corporation or library company, agreeably to the rules, ordinances and by-laws thereof, during their continuance in office : *Provided however,* that not less than three of the directors shall be a quorum to do business ; that no by-laws shall be made repugnant to the laws of this commonwealth, and that no contribution shall be laid on any share, in any one year, greater than one fifth of the value of a share, without the consent of a majority of the members.
- Sec. 5. And be it further enacted,* That there shall be a semi-annual meeting of the members of the said library company, at the library, or such suitable place as the directors may from time to time appoint, of which the directors shall cause at least ten days notice to be affixed on the door of the court-house in the town of Winchester, or on the doors of the taverns or public houses in said town ; at which time and place the members, or such of them as may be present, either personally or by proxy, evidenced under the hand of the shareholder, and shall not be in arrears for any annual contributions, fines or forfeitures, shall elect and choose by ballot five directors out of their number to serve for the half year ensuing their election, and until others shall be elected
- Their seal.
- Appoint certain officers.
- May enact by-laws, &c.
- Further powers.
- Provide.
- Restrictions.
- Meetings of the shareholders.
- Who shall vote for president & directors.



and consent to serve in their places: *Provided always,* 1810.  
 that a majority of the shareholders as aforesaid, either  
 personally or by proxy, shall be necessary to elect the  
 directors, and that each shareholder shall be entitled to  
 one vote for each share he shall possess in the institu- Number votes  
each sharehol-  
der entitled to.  
 tion; and that the concurrence of all the shareholders  
 present as aforesaid shall be essential to the election of  
 a director.

Sec. 6. *And be it further enacted,* That the directors Books of the  
corporation.  
 shall cause the treasurer, secretary and librarian to keep,  
 in suitable books for that purpose, just and proper en-  
 tries of all the proceedings and accounts of the company,  
 and have them laid before the company at every half  
 yearly meeting, previous to taking the votes for direc-  
 tors; and shall always deliver the said books, together  
 with all the property of the company, in good order, to  
 their successors in office, whenever required.

Sec. 7. *Be it further enacted,* That the first election First election  
for directors,  
when held.  
 for directors, by virtue of this act, shall be held on the  
 first Saturday in January next; and the second election  
 on the first Saturday in January next ensuing; and on  
 the first Saturdays of January and July in every year  
 forever thereafter; and in case a majority should fail to  
 appear at the times appointed to hold elections of direc-  
 tors, that elections shall be held as soon thereafter as the  
 attendance of a majority of the shareholders can be ob-  
 tained for that purpose, previous notice thereof being  
 given as aforesaid: *Provided always,* that if twenty  
 shares shall not be subscribed for, prior to the period General elec-  
tions.  
 limited for the first election by this act, then the said  
 election shall be postponed until the aforesaid twenty  
 subscribers shall be obtained, Provida.

Sec. 8. *Be it further enacted,* That each shareholder Shares may be  
transferred or  
relinquished.  
 shall be at liberty, at all times, to transfer or relinquish  
 his share or shares, and that he shall forever thereafter  
 be released from all further contribution on account  
 thereof: *Provided however,* that the legislature of this  
 state reserve to themselves the power at all times to al-  
 ter, amend or repeal this act.

1810.

## CHAPTER CXCV.

*An ACT to keep open and improve the navigation of Big Barren River from the mouth of Bay's Fork, in Warren County, to the mouth of Long Creek in Barren County.*

Approved December 27, 1810.

**Commissioners.** Sec. 1. *BE it enacted by the general assembly, That* Alexander Davidson, Junr. and Samuel Parker, of Barren county, and John Godly of Warren county, are appointed commissioners, to open and keep in repair the navigation of Big Barren river, from the mouth of Bay's fork, in Warren county, to the mouth of Long creek in Barren county: and they are hereby empowered to raise by subscription the sum of one thousand dollars, either in money, property, or labor, for the purpose aforesaid; and the said commissioners, or a majority of them, are hereby authorised to cause all obstructions to the navigation of said stream to be removed; and to cut down all timber projecting over said stream; shrub all points of islands; remove all fish-dams, rocks, or-logs; and the said commissioners, or a majority of them, as soon as they shall raise a sufficient sum for the purpose aforesaid, may proceed to employ hands, and superintend the clearing out of said stream, agreeably to the provisions of this act: *Provided, however,* that the said commissioners, before they proceed to clear out said stream, shall, in the county court of Barren, enter into bond, with security to be approved of by the said court, in the sum of fifteen hundred dollars, conditioned to appropriate the money, property and labor to removing the obstructions on said stream, in pursuance of the directions of this act; and the said commissioners shall receive compensation for their services, in proportion to the time they or either of them may serve, out of the subscriptions to be raised by this act, not exceeding one dollar for each day which they shall actually serve in clearing out said stream.

**Sum to be raised.**

**How appropriated.**

**Commissioners to give bond.**

**Penalty.**

**Condition.**

**Compensation.**

**Penalty on placing obstructions in the stream.** Sec. 2. *And be it further enacted, That from and after the passage of this act, any person erecting, or causing to be erected, any-fish dams, bridges, or other obstructions to the passage of boats up or down said stream, shall for every such offence, forfeit and pay five dollars for every twenty-four hours such obstruction shall remain therein.*

Sec. 3. *And be it further enacted,* That the commissioners under this act, shall be authorised to institute suits before the competent tribunals, to recover the subscriptions under this act. 1810.  
How subscrip-  
tions recovered.

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### CHAPTER CXCV.

*An ACT for the relief of Thomas Means.*

Approved December 27, 1810.

This act corrected a mistake of the county surveyor ; by which, Means was about to get only 130 instead of 200 acres of head right land : he having paid the state price in full for 200 acres.

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### CHAPTER CXCVI.

*An ACT to amend an act entitled "an act to amend the law respecting Cut Money."*

Approved December 27, 1810.

The act here amended is the 52d chapter of this volume.

*BE it enacted by the general assembly,* That the oath required to be taken of collectors of public money by virtue of the second section of the act entitled "an act to amend the law respecting cut money," shall be administered by the treasurer only ; and any collector swearing falsely in the premises, shall be deemed guilty of perjury, and liable to the punishment provided by law for that offence.

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### CHAPTER CXCVII.

*An ACT for the relief and benefit of the Sheriffs of this Commonwealth.*

Approved December 22, 1810.

WHEREAS Richard Davis, sheriff of Hopkins county, having failed to return his list of delinquents agreeably to law, in the year 1809, owing to the want of time to travel to Frankfort, from the session of the court of claims of the said county, until the limitation for the returning of lists of delinquents by law, had expired : and whereas a law passed at the last session of the legislature, allowing the said sheriff the privilege of returning his list of delinquents, within the space of fifteen days from the passage of the said law ; but from an ~~considerable~~ informality which existed in the said list, the

1810. auditor of public accounts did not feel himself authorised then to receive it; and before it could be returned and corrected, the said time of fifteen days had expired: wherefore,

Richard Davis. Sec. 1. *Be it enacted by the general assembly,* That the said Richard Davis, shall be authorised to draw from the treasury the certified amount of the delinquent list of Hopkins county, for the year 1809, the said Davis having first produced the said list, within four days from the passage of this law, to the auditor of public accounts, after the manner prescribed by law; and having obtained from him the necessary receipt.

Certain sheriffs allowed longer time to return lists of delinquents. Sec. 2. *Be it further enacted,* That in all cases where any sheriff of this commonwealth shall have been unable to return their delinquent lists for the year 1809, in the time prescribed by law; and have by reason thereof, been prevented from getting their said delinquent lists allowed by the auditor; and have notwithstanding paid up, and obtained their quietus, shall within the space of three months from the passage of this act, be entitled to a warrant from the auditor for the amount of his delinquent list, upon his producing the same to the auditor duly certified according to law: and in cases where sheriffs shall not have obtained his quietus, that said sheriff shall have the further time of ten days after the passage of this act, to return his said delinquent list.

Sec. 3. And whereas, from a number of unforeseen accidents and causes, sheriffs have been deprived of the benefit of their delinquent list, in settling with the auditor for the revenue tax, and without remedy only by a special law for that purpose: therefore, in order to prevent the frequent applications to the legislature for that purpose,

Time extended for returning delinquent lists in case of accidents. *Be it enacted,* That it shall be lawful for the auditor, at any time before the first day of January in every year, to receive the delinquent list of any sheriff, certified as the law directs; and if such sheriff shall have settled up the whole revenue due from him, to grant such sheriff a warrant on the treasurer for the amount of such delinquent list.

#### CHAPTER CXCVIII.

#### *An ACT for the relief of the Sheriff of Cumberland County.*

Approved December 22, 1810.

This act gave him two months longer to return his delinquent list.

## CHAPTER CXCIX.

1810.

*An ACT authorising the County Court of Jefferson County to lay their County Levy.*

Approved December 19, 1810.

## CHAPTER CC.

*An ACT to amend the act entitled "an act for the regulation of the Town of Monticello, in the County of Wayne."*

Approved December 19, 1810.

WHEREAS the act passed at the last session of the general assembly, entitled "an act for the regulation of the town of Monticello, in the county of Wayne," has not been carried into effect, owing to the promulgation of the law being later than the time of electing trustees, as directed by the before recited act: therefore,

Sec. 1. *Be it enacted by the general assembly,* That the election of trustees for the said town of Monticello, may be held on the second Saturday in May next, subject to all the rules and regulations that are provided for in the said recited act; and the said trustees, when so elected, shall be vested with all the powers to carry into effect the before recited act, as are therein given to trustees.

Sec. 2. *And be it further enacted,* That elections for trustees for said town shall hereafter be held on the second Saturday in May in every two years thereafter, any law to the contrary notwithstanding.

## CHAPTER CCI.

*An ACT for the relief of Hans Harper.*

Approved December 19, 1810.

He had paid money, by mistake, on a wrong head-right claim. This act appropriated it to the right one.

## CHAPTER CCII.

*An ACT erecting Election Precincts in the Counties of Hardin and Caldwell.*

Approved December 19, 1810.

Sec. 1. *BE it enacted by the general assembly,* That all that part of Hardin county included in the following Boundary of Hardin precinct

1810.

bounds, viz. Beginning at the mouth of Nolinn creek; thence up the same to the mouth of Jacob Miller's spring branch; thence a direct line to the Elk spring, near Jacob's Knob; thence a straight line to the county line dividing Green and Hardin counties, so as to include Linncamp creek within the bounds of the precinct; thence with the said dividing line between the said counties of Green and Hardin, to Green river; thence down Green river to the beginning, shall be and the same is hereby erected into an election precinct, in the said county of Hardin.

Place of voting,

Sec. 2. *Be it further enacted,* That all the qualified voters for the said county of Hardin, living within the bounds of the precinct hereby laid off, shall meet at the house of Arthur M'Gaughey, in said precinct, on the day appointed by the constitution and laws of this state, and vote in all cases where elections are to be held, in the same manner and under the same rules and regulations as if they were voting at Elizabethtown, in the court-house of the said county of Hardin, subject to the same fines, penalties and forfeitures, in all cases as if this act had not passed, and as if said voters were voting or attempting to vote in the said court-house of Hardin county.

Court to appoint judges, clerk, &amp;c.

Sec. 3. *Be it further enacted,* That the county court of Hardin county shall, at the same time they appoint a clerk and judges to preside at the election for the balance of the said county, shall also appoint a clerk and judges to preside at the election to be held in the precinct hereby erected; and further, appoint a deputy sheriff: and the said sheriff, clerk and judges shall be, in all cases, governed, in conducting said election to be held in said precinct, as if the same were held at the said court-house of Hardin county.

When &amp; where polls to be compared,

Sec. 4. *Be it further enacted,* That the sheriff who presides at the election of the said precinct, shall meet the sheriff who presides at the court-house of Hardin county, in the said court-house, on the fourth day after the commencement of the election, and compare the polls, and make return agreeable to the constitution and laws of the state.

Boundary of Caldwell precinct.

Sec. 5. *And be it further enacted,* That all that part of Caldwell county, lying north of the road leading from

Christian court-house to Centreville, be and the same is erected into an election precinct.

1810.

Sec. 6. All the qualified voters in the said precinct, shall meet at the house of John C. Dodd, on the day appointed by law, and vote in all cases where elections are to be held, in the same manner and under the same rules and regulations as if voting at Eddyville, at the county court-house of Caldwell, subject to the same fines, forfeitures and regulations, in all cases, as if this act had not passed, and as if such voters were voting or attempting to vote in the said court-house of Caldwell county.

Place of holding elections.

Sec. 7. *Be it further enacted*, That the county court of Caldwell, shall appoint, as the law directs, a clerk and judges to preside at the election in the said precinct, as also a deputy sheriff, who shall in all cases be qualified and governed, in conducting the election in the said precinct as if it were conducted at the court-house of Caldwell county.

Court to appoint clerk, judge, &c.

Sec. 8. *Be it further enacted*, That the sheriff who presides at the election of said precinct, shall meet the sheriff who presides at Caldwell court-house, at the said court-house, on the fourth day after the commencement of the election, and compare the polls, and make return, as the law directs.

When & where polls to be compared.

### CHAPTER CCIII.

*An ACT authorising certain Advertisements to be published in the American Republic and Luminary.*

Approved December 19, 1810.

*BE it enacted by the general assembly*, That orders of courts, advertisements, and notices, may be published in the newspaper entitled the American Republic, and in the newspaper entitled the Luminary; the former printed in Frankfort, the latter at Richmond, in the county of Madison: and that the editors of said papers shall respectively receive the fees established by law, for such services as they may perform under this act; and that such publication shall be as valid between the parties, as if the same had been made in any other authorised paper of the commonwealth.

1810.

## CHAPTER CCIV.

*An ACT to amend the act concerning the Town of Glasgow in Barren County.*

Approved December 19, 1810.

*BE it enacted by the general assembly, That the trustees of the town of Glasgow and their successors in office, are hereby authorised and empowered to make titles to all such lots, within the limits of said town, where titles have not been heretofore made.*

## CHAPTER CCV.

*An ACT concerning Administrators with the Will annexed.*

Approved December 22, 1810.

*Sec. 1. BE it enacted by the general assembly, That* Powers of administrators. *wherever administration has been heretofore, or shall hereafter be granted on the estate of a deceased person, with the last will and testament of the testator annexed, that the person or persons administering shall possess and exercise all and every of the powers, interests, rights and authorities, that, by the will, belong to the executors therein named, or any of them.*

*Sec. 2. And be it further enacted, That any person or* Administrators to give bond, and where. *persons who have administered, or may hereafter administer, as aforesaid, shall execute bond with sufficient security, in the proper county court, conditioned faithfully to execute the will in the same manner in which executors are now required to give bond, but with such variations as are adapted to the difference of cases; and the same may be proceeded on in like manner as the bond of an executor, and shall be subject to the same rules and regulations.*

## CHAPTER CCVI.

*An ACT authorising the publication of Orders of Courts, Advertisements, and other Notices, in the Impartial Observer, published in Danville.*

Approved January 1, 1811.

*BE it enacted by the general assembly of the commonwealth of Kentucky, That it shall and may be lawful for any advertisements which are required by law to be published in a newspaper, to be inserted in the Impartial*



Observer, published in Danville, Kentucky; and the editor or editors of said paper shall be entitled to the same fees, and be governed by the like regulations, as other printers in this commonwealth: *Provided*, that nothing herein contained shall be so construed as to authorise the insertion of such advertisements as are particularly required by law to be published in the paper of the public printer.

1810.

## CHAPTER CCVII.

*An ACT for the relief of the Clerk of Green Circuit Court, and the Surveyor of Scott County.*

Approved January 1, 1811.

They had neglected to enter into bond conformably to the act of last session. This act permitted them still to do it, and released them from the forfeitures incurred.

## CHAPTER CCVIII.

*An ACT erecting part of Knox County into an Election Precinct.*

Approved January 1, 1811.

Sec. 1. *BE it enacted by the general assembly*, That <sup>Boundary of the</sup> all that part of Knox county contained in the following precinct. boundary, to wit: beginning on the Tennessee line, running north to the extreme height of the ridge between Poplar and Mud creeks; thence with the said ridge, to where it divides Patterson and the Clear fork, and with the same to the Cumberland river above the house of Thomas Dickens; thence with the ridge between Maple and Watts's creeks; thence with a ridge which divides the waters of Watts's and Meadow creeks, including all the waters of Watts's creek in the precinct; thence with the ridge that divides the waters of Lynn camp and Spruce creeks, and with the same to Laurel river; thence due north to the reserved line, and with the said line to Big Rockcastle, and down the same to its mouth; thence with the Knox county line to the state line, and with the state line to the beginning shall be deemed an election precinct for the county of Knox; and the elections therein, shall be held at the house of <sup>Place of hold-</sup> Samuel Cox: and the sheriff, clerk and judges, who <sup>ing elections</sup> shall be appointed to attend elections in said precinct, <sup>therein.</sup> shall be under the same regulations, and receive the same.

1810. compensation, as the law directs in similar cases : and all the voters in said precinct shall vote therein, and not elsewhere.

When & where  
polls to be com-  
pared.

Sec. 2. *Be it further enacted*, That the sheriffs attending the elections at Knox court-house and said precinct, shall meet at the said court-house on the Friday next after each election, and there compare the polls of the several candidates, and give certificates conformably thereto.

#### CHAPTER CCIX.

*An ACT for the relief of John Bradshaw.*

Approved January 4, 1811.

He had paid tax for three retail stores when he had only two. This act permitted him to draw from the treasury the tax of one.

#### CHAPTER CCX.

*An ACT authorising the release, confirmation and sale of part of the Public Square in the Town of Versailles to Joseph and John Kincaid.*

Approved January 4, 1811.

#### CHAPTER CCXI.

*An ACT for keeping open the Navigation of Little River in Christian County.*

Approved January 4, 1811.

WHEREAS it is represented to the present general assembly that great public advantage would result to the inhabitants of Christian county, by prohibiting all obstructions in the navigation of Little river : therefore,

*BE it enacted by the general assembly*, That from and after the passage of this act, Little river shall, as a navigable stream, remain open and unobstructed, for the purpose of navigation, from its mouth up to the mouth of Sinking fork of said river : and any person erecting, or causing to be erected, any fish-dams, bridges, or other obstructions to the passage of boats up or down said stream, shall, for every such offence, forfeit and pay the sum of three dollars to the person aggrieved, to be recovered before a justice of the peace, for every twenty-four hours such obstruction or obstructions shall remain therein.

## CHAPTER CCXII.

1810.

*An ACT to repeal in part the act altering the mode of taking in Lists of Taxable Property, and to prevent impositions on this Commonwealth.*

Approved January 4, 1811.

The act referred to is chapter 165 of this volume.

WHEREAS there is reason to apprehend that the Preamble: clerks of the county courts, or some of them, for making out the books of persons and property subject to taxation, may draw monies from the treasury improperly; and there is reason to believe that some certificates have been granted by the county courts, contrary to the plain rate of estimating the services of the clerk, prescribed by the act of the last session, altering the mode of taking in lists of taxable property, and that some monies have already been drawn from the treasury, by means of such improper certificates: therefore,

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky,* That so much of the said recited act as authorises the auditor of public accounts, to issue warrants on the treasury for the compensation of clerks for the duties aforesaid, upon the certificate of the amount thereof by the county court, either for services already rendered, or hereafter to be rendered, shall be, and it is hereby repealed: and the auditor shall examine the books certified by the said county courts, as made out by the clerks respectively, and shall calculate the amount due the said clerks respectively, for making such books according to the mode and rate of services established by that act, and issue a warrant on the treasury accordingly. Section of former act repealed. Auditor to examine commissioners' books, and ascertain the compensation to clerks.

Sec. 2. *Be it further enacted,* That in future years the county courts shall not certify the amount due the clerk; but shall certify according to the other duties in said act, required of them.

Sec. 3. *Be it further enacted,* That where any clerk by means of warrants or warrant, issued or to issue, upon the certificate of a county court, hath received, or shall hereafter receive, more money than his services will amount to, according to the rate established by said act, such clerk shall be liable to refund the excess so received, with interest, costs and expense of giving notice, to be recovered on motion of the auditor of public accounts Clerks to refund excess drawn for their services. How recovered.

1810.

Proviso.

in the general court, on ten days previous notice being given, as in cases of delinquent sheriffs and collectors: *Provided however*, that on the trial of such motion, if the defendant shall require it, a jury shall be empannelled and summoned, as in other civil cases; and on such judgments, execution shall issue, on which the clerk shall endorse, that "no security of any kind shall be taken."

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### CHAPTER CCXIII.

*An ACT to amend the act for improving the Navigation of Green River.*

Approved January 10, 1811.

The act referred to will be found in Volume III, page 467.

River to be laid  
off into pre-  
cincts.

Overseers to be  
appointed and  
hands allotted.

What courts  
shall have juris-  
diction over cer-  
tain parts of the  
stream.

Clerks to make  
out copies of the  
orders of ap-  
pointment.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That it shall be the duty of the county courts of the several counties through, or by which, so much of Green river as is by this act declared navigable, may run, forthwith to lay off said river into precincts or divisions; which precincts or divisions so laid off, shall be considered as permanent, until altered or changed by any of said courts, in their respective counties; and it shall also be the duty of the said courts respectively, at the time they shall lay off said river into precincts or divisions, to appoint a surveyor or overseer to each precinct or division, and allot to each a sufficient number of hands, of the male titheables of said county, to remove all obstructions in said river, and to keep the same open for navigation.

Sec. 2. *And be it further enacted*, That where the said river shall be the dividing line between two counties, it shall be the duty of the court of that county which is oldest, or shall have been first established, to lay off so much of said river as shall bind thereon, into precincts or divisions, and to appoint a surveyor or overseer to each; and in such case all the male titheables of each of the adjoining counties, who shall reside within three miles of said river, shall be and the same are hereby allotted to the said surveyors or overseers so appointed, to enable him to clear out and keep in repair said river.

Sec. 3. *And be it further enacted*, That it shall be the duty of the clerks of the respective courts, within twenty-five days after the appointment of surveyors or over-

seers, as by this act directed, to make out and deliver to their respective sheriffs, copies of the several orders appointing surveyors or overseers, specifying therein the bounds of the precinct or division to which each one is appointed, and the hands to each precinct or division allotted; and it shall be the duty of the respective sheriffs, within twenty days after the receipt of said copies, to notify each person so appointed as surveyor or overseer, of his said appointment, either by delivering to him a copy of said order, or by leaving the same with some person, at his usual place of residence; and the several persons so appointed as surveyors or overseers, when they shall be notified thereof, shall call on the hands to each of them allotted, and with said hands shall, at least twice in every year, and as often thereafter as shall be found necessary, proceed to clear out said river, as is directed by the second section of an act approved the 16th of February 1808, for improving the navigation of Green river.

1810.

Duty of Sheriffs.

Duty of overseers.

Sec. 4. *And be it further enacted*, That the several county courts aforesaid, shall have power, at any time when to them it shall seem expedient, to alter or change the bounds of the several precincts or divisions, in their respective counties, and to re-allot the hands thereto; and when any surveyor or overseer, appointed in pursuance of this act, shall remove out of the bounds of his precinct, or shall resign said appointment, (which they shall not be permitted to do without the leave of the court making such appointment, until the expiration of one year after receiving the same) in either case the respective courts shall forthwith appoint some other fit person to fill said vacancy, who shall be notified thereof as is above directed.

Courts may alter the districts.

And re-allot the hands.

Courts to fill vacancies.

Sec. 5. *And be it further enacted*, That the said river shall be considered and is hereby declared navigable, from the mouth of Knoblick creek, in Casey county, to its junction with the Ohio; and any person or persons who shall build any dam or dams, erect any fish-pot or trap, or shall fall or place any tree or trees in or across said river, within the bounds by this act declared navigable, unless authorised so to do by special act of assembly, shall for every such offence forfeit and pay the sum of fifteen dollars, to be recovered before any justice of the peace, in the county where such offence shall have

Part of the river to be kept open.

Penalty on obstructing the navigation.

1810. *Applied qui tam* been committed, or in either of the adjoining counties, where the offence shall have been committed in that part of said river which shall be the dividing line between two counties, one half thereof shall go to the use of the informer, and the other half shall be paid to the surveyor or overseer of that part of the river where said offence shall have been committed, to be by him applied to the farther improvement of the navigation of said river; and such dam or dams, fish-pot or trap, or other obstruction, shall be abated or removed by the surveyor or overseer.

*Repealing clause.* Sec. 6. *And be it further enacted,* That the fifth section of an act for improving the navigation of Green river, and every other part or parts of said act, which comes within the purview of this act, shall be and the same are hereby repealed.

#### CHAPTER CCXIV.

*An ACT authorising a Lottery for the improvement of the Navigation of the Kentucky River.*

Approved January 10, 1811.

*Recital.* WHEREAS the navigation of the Kentucky river is of great importance to the citizens of this commonwealth; but owing to the obstructions therein, whereby many losses are incurred, many are deprived of its advantages: for the purpose of removing said obstructions,

*Managers of the lottery.* Sec. 1. *Be it enacted by the general assembly,* That it shall and may be lawful for Green Clay, Thomas C. Howard, John W. Hunt, Lewis Sanders, William N. Lane, Beverly Broadbush, Jephthah Dudley, Charles Buck, John Rochester, Beriah Megoffin and John Hann, or a majority of them, to raise by lottery, in one or more classes, as to them may appear necessary, any sum not exceeding ten thousand dollars, to be applied to the purposes hereafter mentioned; and the said Green Clay, Thomas C. Howard, John W. Hunt, Lewis Sanders, William N. Lane, Beverly Broadbush, Jephthah Dudley, Charles Buck, John Rochester, Beriah Megoffin and John Hann, are hereby bound to pay to the fortunate persons the amount that each person shall be justly entitled to by the event of the said lottery: and in case of failure shall be liable to the action of the party aggrieved.

*Sum to be raised.*

ed, or so many of them as were concerned in carrying the said lottery into effect. The drawing of the said lottery shall be done in the county of Fayette and town of Lexington, and shall not commence unless two of the justices of the peace in said county are present, whose duty it shall be to see that the same is fairly and properly conducted; and each of the drawers, examiners and clerks, and all others concerned in drawing said lottery, shall, before the same commences, take an oath to act fairly and impartially in the discharge of their several offices, which any justice of the peace in said county may administer. If the said lottery is not drawn within two years from the passage of this act, it shall be lawful for the purchasers of tickets to demand and receive the money they have respectively paid, from the persons receiving the same.

1810.

Where lottery to be drawn.

Conductors of the lottery to be sworn.

Time in which the lottery shall be drawn.

Sec. 2. *Be it further enacted*, That upon the receipt of the monies produced by the said lottery, the said commissioners, or a majority of them, shall, by public advertisement or otherwise, proceed to let out to the lowest bidder, the removal of all obstructions in the Kentucky river, from Garrard's lick to its mouth, to any individual or individuals, by precincts or otherwise, that will undertake the same; who shall, before they proceed to work thereon, give bond and security to the managers aforesaid, for the faithful execution of their duties as herein described, according to the undertaking they shall make; which may, upon breach thereof, be put in suit by said managers, and a recovery had according to their failure.

Appropriation of the fund there by raised.

Undertaker to execute bond.

Sec. 3. The said undertakers shall clear the said river as foresaid, clear of all logs, brush, trees, rocks, fish-traps, shrub all points of islands, and remove other impediments therein; and the time for its performance shall be limited, at the discretion of said managers.

Obstructions to be removed and abated.

## CHAPTER CCXV.

*An ACT for the benefit of John Gatewood.*

Approved January 10, 1814.

He was proprietor of a settlement right, and this act authorized him to locate the land where his house stood, which by mistake had been built off his claim.

## DECEMBER SESSION,

1810.

## CHAPTER CCXVI.

*An ACT concerning Officers' Bonds.*

Approved January 15, 1812.

*BE it enacted by the general assembly, That in every case where bond shall hereafter be executed by any public officer, in that capacity, payable to the commonwealth of Kentucky, or in any other manner now binding in law, the penalty of such bond shall not limit the recovery thereon against the principal and security or securities; but they, and each of them, shall be liable according to law, to the full extent of the official obligations of such officer, as the same are enumerated in the condition of such bond.*

## CHAPTER CCXVII.

*An ACT for the relief of Edmund Taibot.*

Approved January 15, 1812.

This act directed some words to be inserted in his patent which had been omitted.

## CHAPTER CCXVIII.

*An ACT for the relief of Richard Evans, former Sheriff of Floyd County.*

Approved January 15, 1812.

This act relieved him from the 18 per cent. damages on a principal debt which had been repmitted to him in 1806.

## CHAPTER CCXIX.

*An ACT to amend the act entitled "an act to amend an act establishing the Town of Shepherdsville, and for other purposes."*

Approved January 15, 1812.

Sec. 1. *BE it enacted by the general assembly, That a survey of Shepherdsville, made by James Shanks, surveyor of Bullitt, and the plan or plats thereof, made out by him, and dated the eighteenth day of July, in the year one thousand eight hundred and nine, be established as the true plan of said town, and of the situation and boundaries of lots, streets and alleys therein: and that all disputes or controversies that may arise, relative to their situation or extent, shall be determined by the aforesaid plan or platt.*



## CHAPTER CCXX.

1810.

*An ACT for the division of Henderson County.*

Approved January 15, 1811.

Sec. 1. *BE it enacted by the general assembly, That* Boundary.  
 from and after the first day of May next, all that part of the county of Henderson, included in the following bounds, to wit: beginning at the upper point of the Eighteen Mile island, formerly called Elk island, on the Ohio river; thence a straight line to Highland creek, one mile above Higgins's mill, measured along the meanders of the creek; thence up the said creek to the White-Lick fork thereof; thence a direct and straight line, by "Harper's Head," to the line of Hopkins county; thence with that line to Trade Water river; thence down the same to the Ohio river; and up the Ohio to the beginning, shall be one distinct county, and called and known by the name of Union. A court for the said county shall be held by the justices thereof, on the second Monday in every month, in which the circuit courts are not hereafter directed to be held.

Sec. 2. The justices to be named in the commission of the peace for the said county of Union, shall meet at the house of Jeremiah Riddle, in the said county of Union, on the first court day after the said division shall take place: and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices of the county court, shall proceed to appoint and qualify a clerk; and that Jonathan Ramsey, William Bradford, James Johnston (of Livingston), William R. McGary and Charles Davis, shall be, and they are hereby appointed commissioners, to fix on the place for the permanent seat of justice in the said county of Union, who shall meet at the place and time appointed for the first meeting of said justices, or as soon thereafter as the said commissioners can; and each having taken an oath, before some justice of the peace, to discharge the duty of a commissioner, in fixing on the seat of justice for the county of Union, without favor, affection, partiality or prejudice, according to the best of his skill and ability, they or a majority thereof, shall proceed to fix on a place for the permanent seat of justice of said county, having due regard to public convenience of water, and of situation, as it respects the capacity of the lands in

When Justices  
to meet and ap-  
point clerk.

Commissioners  
appointed to fix  
the seat of jus-  
tice.

Time of meet-  
ing and their  
duty.

1810.	said county, for sustaining present and future population ; and having ascertained the place aforesaid, they shall, under their hands, certify the same to the county court. The said commissioners, for their services, shall be allowed each three dollars for every day they shall be necessarily engaged in performing their said duties, to be levied and paid out of the first county levy ; and thenceforth, the said court shall cause to be erected at such place the necessary public buildings ; and, until such buildings are erected, shall hold their several courts in the most convenient house at the said place. Each court shall appoint its own clerk, a majority concurring therein ; but a majority of those present on any court day, may appoint a clerk <i>pro tempore</i> .
Commissioners' allowances, and how paid.	
Public buildings.	
Each court to appoint its own clerk.	
Circuit Court when held.	Sec. 3. <i>Be it further enacted</i> , That the circuit court for the said county of Union shall be held, annually, on the first Monday in the months of March, June and September.
Sheriff of Henderson, his duty	Sec. 4. It shall be lawful for the sheriff of Henderson to collect and make distress for any public dues and officers' fees which shall remain unpaid by the inhabitants of the said county of Union at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made ; and the courts of the county of Henderson shall have jurisdiction in all actions and suits, either in law or equity, which shall be depending before them at the time of such division ; and shall try and determine the same, issue process, and award execution therein.
Jurisdiction of the Henderson courts.	
Where and how Union shall vote	Sec. 5. <i>And be it further enacted</i> , That the citizens of the said county of Union, shall vote for members to serve in the general assembly, as joined with, and making a part of the county of Henderson, in the same manner as heretofore, until the next apportionment of the ratio of representation, by the legislature of this commonwealth, except that the sheriff and justices of the said county of Union, shall take the polls, and conduct such election ; the sheriff whereof, shall meet the sheriff of Henderson, on the Friday after the election shall have closed, at the court-house of Henderson county ; shall compare the polls, and declare the election accordingly. The said county of Union, shall remain and be a part of, and belong to the sixth judicial district ; and the circuit judge of said district, shall attend and preside in the circuit courts in the said county.
By whom election conducted.	
When & where sheriffs to meet.	

## CHAPTER CCXXI.

1810.

*An ACT for the division of Montgomery County.*

Approved January 15, 1811.

Sec. 1. *BE it enacted by the general assembly, That* Boundary.  
 from and after the first Monday of February next, all that part of Montgomery county included in the following bounds, to wit: Beginning where the division line between Bourbon and Montgomery crosses Hinkston; thence up Hinkston to the mouth of Lane's branch; thence to Flat creek, at the upper end of Alexander M'Intire's farm, on which Original Young now lives, leaving James H. Lane's house in the old county; thence to Stepstone creek, one and a half miles above the mouth, including Book's farm; thence a straight line to the waters of Little Slate creek, so as to include Jouitt's farm in the new county; thence a direct line to where the Slate road crosses Black Water creek; thence down Black Water to the mouth; thence down Licking to the Nicholas county line; thence along the Nicholas line to the Bourbon county line; thence along said line to the beginning, shall be one distinct county, Bath.  
 and called and known by the name of Bath.

Sec. 2. The courts of the said county of Bath, shall When courts to  
 be held on the first Monday in every month, except the be held.  
 months in which circuit courts are held: and the circuit courts shall be held, annually, in the months of May, August and November, in such manner as is provided by law, in respect to other counties in this commonwealth.

Sec. 3. The justices named in the commission of the Where & when  
 peace for the said county of Bath, shall attend at the justices to meet.  
 house of James Young, on Flat creek, on the first court day after such division shall take place; and having taken the oaths prescribed by law, and the sheriff being duly qualified, the court shall proceed to appoint and  
 And appoint  
 clerk.  
 qualify their clerk; and that William M'Millan, Duval Payne, James Ray, Thomas Dougherty and David Todd, Esquires, a majority of whom may act, be, and they are hereby appointed commissioners to fix upon a Commissioners  
 a place for the permanent seat of justice for said county; to fix seat of  
 who shall, in fixing the same, be regulated by a due justice.  
 regard to the centre of population and tillable land: *Provided however,* a majority of all the justices shall concur

1810. in the appointment of said clerk ; and the said commissioners having fixed upon such place, the seat of justice shall there be established : and the court shall cause public buildings to be erected thereon ; and until such buildings are erected, the said court shall fix upon such place for holding courts in said county as they shall think proper.

Public build-  
ings.

Sheriff of  
Montgomery to  
collect.

Respecting ju-  
risdiction of  
Montgomery  
courts.

Sec. 4. It shall be lawful for the sheriff of Montgomery county to collect and make distress for any public dues and officers' fees which shall remain unpaid by the inhabitants thereof at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made ; and the courts of the county of Montgomery shall have jurisdiction in all actions and suits, either in law or equity, which shall be depending before them at the time of such division, and shall try and determine the same, issue process and award execution therein.

Regulation res-  
pecting elec-  
tions.

Sec. 5. *Be it further enacted*, That the citizens of the said county of Bath shall vote for members to serve in the general assembly, as joined with and making a part of the county of Montgomery, in the same manner as heretofore, until the next arrangement of representation in the legislature of this commonwealth, except that the sheriff of the said county of Bath shall take the polls and conduct such election.

Where & when  
commissioners  
to meet, and  
their duty.

Commissioners'  
pay.

Sec. 6. *Be it further enacted*, That the commissioners appointed to fix the seat of justice for the said county of Bath, shall meet at the time and place appointed for holding the first circuit term in said county, or as soon thereafter as they can with convenience ; and having severally taken an oath to act impartially therein, shall proceed to the discharge of the duty hereby delegated ; and continue in the exercise thereof, from time to time, until they shall have completed it : and the said commissioners shall severally receive for their services, the sum of three dollars for each day they may necessarily be employed under this act, to be levied and paid by the said county of Bath.

To what judi-  
cial district an-  
nexed.

Sec. 7. *And be it further enacted*, That the said county of Bath shall constitute a part of the second judicial district, the circuit judge of which, shall attend and preside therein, as in the other circuit courts in said district.

CHAPTER CCXXII.

1810.

*An ACT for the benefit of the Witnesses on the trial of Jesse Head and George Edlin, deceased.*

Approved January 15, 1811.

The trials were had before the legislature. This act directed them to be paid out of the treasury.

CHAPTER CCXXIII.

*An ACT to amend the several acts authorising County Courts to lay their Levies and make Appropriations.*

Approved January 15, 1811.

WHEREAS the county courts of this commonwealth frequently fail from accident or neglect of duty, to lay their county levy at the times now prescribed, thereby causing frequent applications to the legislature in that behalf: for remedy whereof,

Sec. 1. *Be it enacted by the general assembly, That* All the justices to attend court of claims. it shall be the indispensable duty of all and every of the justices of the peace in this commonwealth, to attend punctually their respective county courts, in the month of October in every year, to hear, examine and liquidate the claims charged by law upon their respective counties, and to lay the levy therefor upon the county, as prescribed by law: and in those counties where a circuit court is, or shall be, appointed to be holden in said month, then, and in that case, the justices of such counties respectively, shall attend their November court for the purposes aforesaid.

Sec. 2. *Be it further enacted, That* in case any court shall fail to lay their county levy, at the times herein before prescribed, they shall proceed to lay the same at their next term. Courts failing to lay levy at proper term, may proceed at their next term.

Sec. 3. *Be it further enacted, That* no county court shall make an appropriation for erecting a court-house, jail, or any additional repairs thereto, nor for building bridges; nor shall place any person on a county pension, nor levy any charge of money on the county, for any purpose whatever, unless a majority of all the justices in commission for that county, shall be present and compose the court. A majority of all the justices of a county shall compose a court in which appropriations are made.

Sec. 4. *Be it further enacted, That* in case any county court shall have failed to lay their county levy, in the When levy may be laid for 1810

1810.

year 1810, such county court or courts, may and shall execute their said duties, at their next March term; and in case a circuit court is or shall be appointed to be holden in that month in any such county, then they shall supply the said failure at their next April term.

Deficit in one  
year's levy first  
supplied out of  
next.

Sec. 5. *Be it further enacted*, That in case there shall be a deficiency in the collection of the monies appropriated to the discharge of the claims upon the county, allowed and levied for in any year, in that case, the claim or claims of that year, not discharged by reason of such deficit, shall be first paid out of the next collection of the county levy.

Repealing  
clause.

All acts or parts of acts coming within the meaning or purview hereof, shall be, and the same are hereby repealed.

#### CHAPTER CCXXIV.

*An ACT allowing to Non-Residents whose Lands have been stricken off to the State by the Register for Taxes, &c. further time to redeem the same.*

Approved January 15, 1811.

*BE it enacted by the general assembly of the commonwealth of Kentucky*, That the further time of twelve months, from and after the passage of this act, be allowed to such non-residents whose lands have been stricken off to the state by the register for the non-payment of the taxes, interest and costs due thereon, to redeem the same, under the rules and regulations prescribed in the act entitled "an act providing for the redemption of land sold for taxes," passed in 1806.

#### CHAPTER CCXXV.

*An ACT giving farther time to enter Lands for the payment of Taxes.*

Approved January 15, 1811.

Two years given  
to enter  
lands for taxes.

Sec. 1. *BE it enacted by the general assembly*, That the further time of two years, from the expiration of an act entitled "an act to prolong the time for entering land for taxes," approved December 27th, 1808, shall be, and is hereby allowed for entering lands, as is provided for by said act.

Sec. 2. *And be it further enacted*, That all persons claiming titles to lands by patent, deed, entry, survey, or otherwise, lying within the bounds acquired to this state by the treaties of Tellico and Highwassee, shall enter the same for taxes as other lands are required by law to be entered for taxation, within two years from the passage of this act, or the same shall be forfeited to the commonwealth. And that said land, when so entered, shall be subject to sale for the non-payment of taxes as other lands.

1810.

Certain lands to be entered or forfeited.

Lands may be sold for taxes.

## CHAPTER CCXXVI.

*An ACT for adding part of Jefferson to Bullitt County.*

Approved January 18, 1811.

Sec. 1. *BE it enacted by the general assembly*, That from and after the first day of March next, so much of the county of Jefferson, as lies within the following bounds, to wit: beginning at the Elk lick; thence with the line between the counties of Jefferson and Bullitt to Salt river; thence down Salt river to the mouth of Pond creek; thence up Pond creek to the mouth of Briet creek; thence a direct line to the beginning, shall be added to, and to all intents and purposes, be considered as belonging to the county of Bullitt.

Sec. 2. *Be it further enacted*, That the sheriff of Jefferson county, and the constables thereof, shall have full power to execute all process that may be put into their hands against any person, or the estate of any person, prior to the first day of March next; and to collect all officers' fees and public dues that may be in their hands and unpaid on the said first day of March; and to account for the same, and in the same manner as if this act had not passed.

## CHAPTER CCXXVII.

*An ACT supplementary to an act establishing an Academy in the County of Barren.*

Approved January 18, 1811.

*BE it enacted by the general assembly of the commonwealth of Kentucky*, That the trustees of said academy are hereby authorised and empowered to dispose of the whole of the state donation lands granted to said academy, by general warranty, and apply the proceeds thereof as directed by the before recited act.

## DECEMBER SESSION,

1810.

## CHAPTER CCXXVIII.

*An ACT to legalise the proceedings of the Green County Court in December 1810.*

Approved January 18, 1811.

They had laid the county levy in December, instead of October or November. This was the proceeding legalised.

## CHAPTER CCXXIX.

*An ACT for the relief of Dolly George.*

Approved January 18, 1811.

She was a widow, poor and nearly blind, in consideration of which the state price of 300 acres of head-right land was by this act remitted to her.

## CHAPTER CCXXX.

*An ACT to legalise certain proceedings of the County Court of Rockcastle.*

Approved January 18, 1811.

The proceeding legalised was the appointment of persons to take in lists of taxable property after the time for appointing them had expired.

## CHAPTER CCXXXI.

*An ACT for the benefit of Richardson Herndon.*

Approved January 18, 1811.

This act authorised him to locate any quantity of land, not exceeding 1000 acres, contiguous to his own land on Cumberland river, where he had found a salt spring; 20 dollars per 100 acres, was the price, and four years were given to pay it in.

## CHAPTER CCXXXII.

*An ACT making provision for the payment of the Witnesses on the trial of Jesse Gravens and John Anderson.*

Approved January 18, 1811.

The trials had been before the legislature. This act directed payment to be made out of the public treasury.

## CHAPTER CCXXXIII.

*An ACT to improve the Navigation of Nolinn.*

Approved January 18, 1811.

Preamble.

WHEREAS it is represented to the present general assembly, that great advantage would accrue to the in-



habitants of Hardin county, by the removal of the obstructions to the navigation of Nolinn, from Adam Coombes's mill to the mouth of the same :

1810.

Sec. 1. *Be it enacted by the general assembly, That* Commissioners, Adam Coombes, Josiah Best, Aaron Hart, Jacob Vanmatree, Jacob Miller and George Keller, be and they are hereby appointed commissioners, who, or a majority of whom, are hereby vested with power to raise by subscription, in money, property or labor, any sum not exceeding one thousand dollars, for the purpose of clearing and keeping in repair the navigation of Nolinn, from Adam Coombes's mill to the junction of the same with Green river ; remove all fish-pots and dams, cut and clear away all timber projecting over said stream, shrub all points of islands, and remove such other obstructions in the channel as may impede the navigation of said Nolinn river. Power and duty

Sec. 2. *Be it further enacted, That* so soon as in the opinion of said commissioners, or a majority of them, there is a sufficient sum or sums of money, property and labor subscribed for clearing and keeping in repair the navigation of said stream, they shall employ a sufficient number of hands for the removal of all fish-pots and dams of every description, remove all logs, cut and clear away all timber projecting over said stream, shrub all points of islands and remove such other obstructions as may impede the navigation of said stream ; which hands shall be under the direction of said commissioners, and shall be paid by them out of the sum or sums of money or property so subscribed and appropriated as aforesaid. To employ hands.

Sec. 3. *Be it further enacted, That* so soon as the aforesaid commissioners shall have procured subscriptions agreeable to this act, and entered into bond with good security, in the county court of Hardin, in the penalty of one thousand five hundred dollars, payable to the commonwealth of Kentucky, conditioned to appropriate the same to the removal of obstructions of said stream ; and said commissioners, immediately after entering into bond aforesaid, they, or a majority of them, shall immediately proceed to employ hands and superintend the clearing out of said stream, in the manner herein directed. To execute bond.

Sec. 4. *Be it further enacted, That* any person who shall build any dam, or place any other obstruction in Penalty on person obstructing the navigation.

1810. said stream, so as to impede the navigation, shall, on conviction before any justice of the peace, forfeit and pay the sum of five dollars for every twenty-four hours that the same have remained in said stream; one half to the informer, and the other half to the improvement of the navigation of said stream.

*Commissioners' compensation.* Sec. 5. *Be it further enacted,* That the commissioners aforesaid, for their services under this act, shall severally receive the sum of one dollar per day, out of the subscriptions, for each day they may be actually engaged in employing hands and superintending the clearing out and keeping in repair the navigation of said Nolinn.

*How and before whom subscriptions recovered.* Sec. 6. *Be it further enacted,* That the commissioners aforesaid are hereby authorised and empowered to recover the subscriptions before mentioned, by motion before a justice of the peace in the county in which such subscribers may reside, where the subscription may be within the jurisdiction of a justice; and in all cases where the subscription may be for a larger sum, before the circuit court, on giving ten days previous notice of the time and place of such motion.

#### CHAPTER CCXXXIV.

*An ACT concerning the Navigation of the South Fork of Licking, from Eagler's Mill to its junction with Main Licking.*

Approved January 18, 1811.

WHEREAS it is represented to the present general assembly that the navigation of the south fork of Licking, from Eagler's mill to its junction with main Licking, would be of infinite advantage to the citizens of Harrison, Pendleton, and part of other adjacent counties: therefore,

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky,* That all that part of the south Fork of Licking river, from Eagler's mill to its junction with main Licking, shall be and the same is hereby considered a navigable stream, and that from and after the first day of November next, no fish-dam or other obstruction to the navigation of the said stream, shall be erected, made or built thereon, or across the same, under the penalty of five dollars for every twenty-four hours the said fish-dam or other obstruction shall be continued.

Sec. 2. *And be it further enacted*, That where any such fish-dam or other obstruction to the navigation of said stream shall have heretofore been erected, built or made across said stream, it shall be the duty of the person or persons who erected, built or made the said obstructions, to demolish and remove the same on or before the first day of November next: and if any of the said fish-dams or other obstructions as aforesaid, shall be continued or suffered to remain after the said time, the person erecting, building, making or continuing the same, shall be subject to the penalty of two dollars for every twenty-four hours during which the same shall be continued or permitted to remain.

1810.

Sec. 3. *And be it further enacted*, That all fines and forfeitures that shall arise under this act, shall be recoverable before any justice of the peace or circuit court having cognizance of the same, and shall be applied towards improving the navigation of the same, under the direction of the county court in which the fine may be recovered. All acts or parts of acts coming within the purview of this act, shall be and the same are hereby repealed.

Sec. 4. *And be it further enacted*, That nothing herein contained shall be construed to repeal or affect in any way the existing laws concerning the navigation of said south and Stoner's fork of Licking, above said Eagler's mill.

## CHAPTER CCXXXV.

*An ACT for the more effectual preventing of Crimes, Conspiracies and Insurrections of Slaves, free Negroes and Mulattoes, and for their better government.*

Approved January 25, 1811.

Sec. 1. *BE it enacted by the general assembly of the* <sup>What deemed</sup> *commonwealth of Kentucky*, That if any negroes or other <sup>felony.</sup> slaves shall at any time hereafter conspire to rebel or make insurrection, every such conspiring shall be adjudged and deemed felony, and the slave or slaves duly convicted thereof shall suffer death.

Sec. 2. *Be it further enacted*, That where any slave or <sup>Death for poi-</sup> *slaves shall hereafter be convicted of administering to* <sup>son.</sup> *any person or persons any poison or medicine, with the evil intent that death may thereupon ensue, such slave or slaves shall suffer death.*

1810. *Sec. 3. Be it further enacted, That any slave or slaves, free negro or mulatto, hereafter duly convicted of voluntary manslaughter, shall suffer death.*

*Sec. 4. Be it further enacted, That any slave or slaves, hereafter duly convicted of an attempt to commit a rape on the body of any white woman, such slave or slaves so convicted shall suffer death.*

*Sec. 5. Be it further enacted, That it shall be lawful for any trustee of a town to issue his warrant to cause any slave, free negro or mulatto, misbehaving within the limits of the town, to be apprehended and brought before him or some other trustee of said town, who shall have power to punish such slave or slaves, free negro or mulatto, as is now vested by law in a justice of the peace.*

*Sec. 6. Be it further enacted, That if any negro or other slaves, shall at any time hereafter consult or advise the murder of any person or persons whatever, every such consulting or advising shall be punished by any number of stripes not exceeding one hundred, in the discretion of a jury, to be empannelled by order of any justice or justices of the peace before whom such slave or slaves may be brought for trial.*

*Sec. 7. All laws, sections and parts of laws coming within the provisions or purview of this act, are hereby repealed: Provided however, that nothing in this section contained shall be construed to prevent any justice of the peace from exercising the powers given to a trustee.*

#### CHAPTER CCXXXVI.

*An ACT for the relief of certain Citizens of Bardstown.*

Approved January 23, 1811.

The relief sought and given by this act, was placing them in another regiment, so that they need not go so far to muster.

#### CHAPTER CCXXXVII.

*An ACT to erect Election Precincts in the Counties of Christian, Hardin, Casey, Greenup and Lewis.*

Approved January 25, 1811.

*Sec. 1. BE it enacted by the general assembly, That all that part of Christian county within the following bounds, to wit: Beginning on the Tennessee state line, two miles west of Col. Henry Clarke; thence a straight*

line to Major John Roberts's, leaving him out of said boundary; thence a straight line to include John Gray's, on a fork of Little river; thence a straight line to include Samuel Hodges, sen.; thence a straight line to Isaac Stroud's, leaving him out of said bounds; thence a straight line to the mouth of Buck creek; thence down Pond river to the Muhlenburg line; thence with said line to the Logan county line; thence with said line to the Tennessee state line; thence with the said line to the beginning, shall be an election precinct; and the place of holding elections for the said precinct shall be at the house of David Kishner.

1810.

Sec. 2. *Be it further enacted*, That all that part of the county of Christian, lying in the following bounds: Beginning on the Tennessee state line, at Samuel Kelkott's; thence a straight line to Micajah Fort's; thence to William Harges's, jun.; thence to John Adams's; thence to Richard Brownfield's; thence to Joseph Harbourg's, on the Livingston road to Centreville; thence with said road to the Caldwell county line; thence with said line to the Tennessee state line; thence with said line, including the said Kelkot's, Harges, Adams, Brownfield and Harbourg in the precinct, shall be an election precinct; and the place of holding elections for said precinct, shall be at the house of Ferdinand Wardlington.

Christian.  
Boundary.

Sec. 3. *Be it further enacted*, That all that part of Lewis county within the following bounds, to wit: Beginning at the north fork of Licking, on the Fleming line; thence running with the highest ridge of the mountains dividing Cabin creek from the Salt-Lick waters, to the Ohio river, and including that side of said county, on the Cabin creek side of the mountains, shall be an election precinct; and the elections therein shall be held at the house of Okey Hendrickson.

Lewis.  
Boundary.

Sec. 4. *Be it further enacted*, That all that part of Hardin county included in the following bounds, to wit: Beginning at the mouth of Mill creek; thence up the same to the mouth of Gilmore's spring branch; thence a straight line to the mouth of the Brushy fork of Otter creek; thence a straight line to John M'Dowell's, leaving said M'Dowell in the precinct; thence a straight line to the county line between Hardin and Breckenridge counties, so as to include John and Benjamin Stith in said precinct; thence with the said line to the

Hardin.  
Boundary.

1810.

Ohio; thence up the same to the mouth of Salt river; thence up Salt river to the beginning, shall be an election precinct, and known by the name of the West Precinct; and the place of holding the election for said precinct shall be at Benjamin Shackett's.

Casey.

Boundary.

Sec. 5. *Be it further enacted*, That all that part of Casey county included in the following bounds, to wit: Beginning on the Casey and Washington line, where the same crosses the dividing ridge between the waters of the big South and North Rolling forks of Salt river; thence running with the said dividing ridge between the said waters of the big and little South Rolling forks, to the dividing ridge between the waters of the Rolling and Hanging forks; thence running due east to the line between Casey and Lincoln counties; thence with the said line to the line of Mercer county; thence with the same to the line of Washington county; thence with the same to the beginning, shall be an election precinct, to be known by the name of the Rolling-Fork precinct; and the election therein shall be held at the house of Robert Denton, within the said precinct.

Greenup.

Boundary.

Sec. 6. *Be it further enacted*, That all that part of the county of Greenup included in the following bounds, to wit: Beginning on the Fleming line which runs up the ridge between Tygert's creek and Killikanick, about fifteen miles from the Ohio; thence a direct line to the mouth of the Buffaloe fork of Tygert's creek; thence to the Black ripple on little Sandy, near Capt. James How's farm; thence with the dividing ridge between the waters of Cave creek and Wilson's creek, to the road leading to the mouth of big Sandy; thence a direct line to the mouth of Shadrack's creek, on big Sandy; thence up the same and with the county line to the beginning, shall be an election precinct; and the place of holding elections in said precinct shall be at the house where Robert H. Grayson now lives.

Duty of Sheriff,  
clerk and judg-  
es.

Sec. 7. *Be it further enacted*, That the principal sheriffs or sworn deputies of Christian, Hardin, Casey, Greenup and Lewis counties shall superintend the elections hereafter to be held in said precincts; and the county courts of Christian, Hardin, Casey, Greenup and Lewis shall appoint clerks and judges to attend elections in the said precincts, in like manner as the law directs in similar cases; and on failure of the courts aforesaid to make

such appointment, the sheriffs shall fill such vacancies. The said judges, clerks and sheriffs shall be allowed the same allowance for their services, to be paid in like manner, as is directed by law in similar cases.

1810.

Allowance to  
judges, sheriffs,  
&c.

Sec. 8 *Be it further enacted*, That the sheriffs attending elections at the court-house and precincts aforesaid, shall meet at the court-house on the Friday after each election, and shall then and there compare the polls of the candidates, and give certificates as the law directs, to the persons elected.

When & where  
sheriffs to meet.

## CHAPTER CCXXXVIII.

*An ACT for the relief of Commonwealth's Attornies in certain cases, and to legalise the proceedings of certain County Courts.*

Approved January 25, 1811.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That each and every one of the county courts in this commonwealth, wherein the said courts have made no appropriation for the payment of the attornies for the circuit court of their respective counties, since the year 1808, or any part of said time, shall at their January or February county courts, after the passage of this act, receive as a claim against the county, the amount of whatever sum may have been certified by the circuit court of said county, to be due to the attorney of said circuit, for his services for the two preceding years, or any part of the aforesaid time; which sum, so certified, shall, by the said county courts respectively, be received as a claim against their counties respectively, and shall at their aforesaid January or February courts, levy on the titheables of their county, in favor of such attornies, a sum sufficient to pay off such claim or claims; which sum so levied, the sheriff shall collect and account for as if the same had been levied at the preceding court of claims.

Certain county  
courts to make  
appropriations.

Sec. 2. *Be it further enacted*, That all those circuit courts in this commonwealth that have not certified what the commonwealth's attorney for their circuit is entitled to for his preceding year's services, shall at their next circuit court, make such certificate.

How collected  
and accounted  
for.

Certain circuit  
courts to certify  
the claims of  
their attorney.

Sec. 3. *Be it further enacted*, That in all cases where the county court cannot make provision for the payment

Cases in which  
the claim shall  
be paid out of  
the depositum.

1810. of the attornies of the circuit court, as contemplated in the first and second sections of this act, at the January or February county court, the said county court shall, if there be a sufficient depositum for the year 1811, order the same to be paid out of said depositum.

Contingencies upon which the courts shall make appropriation at their next court of claims. Sec. 4. *Be it further enacted*, That if the county courts in this commonwealth cannot make provision for the payment of the circuit attorney, as contemplated in the first and second sections of this bill, neither at the aforesaid January or February courts, nor out of the depositum for the year 1811, then and in that case they shall make provision for the payment of the same at their next court of claims.

Proceedings of certain courts legalized. Sec. 5. *Be it further enacted*, That so much of the proceedings of all county courts which have already provided for the payment of their commonwealth's attornies, is hereby legalised and made valid to all intents and purposes.

#### CHAPTER CCXXXIX.

*An ACT to change the Venue in the trial of Jesse Gravens.*

Approved January 25, 1811.

He was indicted in Ohio county for perjury. This act permitted a change of venue to Hardin.

#### CHAPTER CCXL.

*An ACT to revive the Law allowing longer time for receiving Platts and Certificates into the Register's Office.*

Approved January 25, 1811.

Law for returning platts and certificates revived. And two years longer given. Register bound to receive them. Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the law authorising the returning of platts and certificates of survey to the register's office, which expired on the first day of March, 1810, be, and the same is hereby revived; and the further time of two years from the said first day of March, 1810, be, and is hereby granted, to owners of platts and certificates of surveys, made before the time for surveying entries expired, to return the same to the register's office; in which time, the register of the land office shall be bound to receive all such platts and certificates of survey, whether on treasury warrants, military warrants or settlement and pre-emption warrants, although not



returned within the time limited by the late law; and such lands shall not be considered as forfeited, or liable to forfeiture, on that account, any law to the contrary notwithstanding: *Provided*, That no survey made, or to be made, by virtue of a land office treasury warrant, issued from the state of Virginia, prohibited or not liable to be entered within the bounds claimed by the Cherokee Indians, or Tellico lands, or within the bounds claimed by the Chickasaw Indians, or within the bounds reserved and set apart for the officers and soldiers south of Green river, shall be returned to the register's office: *Provided nevertheless*, that any survey made by virtue of a legal entry, made prior to the first day of May, 1792, by virtue of a warrant or warrants, for military service in the revolutionary war with Great Britain, issued to one of the officers or soldiers, in the state or continental line of the Virginia troops, said entry and survey having been made within the said bounds set apart for the officers and soldiers, south of Green river, except the lands south of the Tennessee river, claimed by the Chickasaw Indians, may be returned to the register's office, and patents may issue therefor as heretofore.

1810.

Proviso.

Proviso.

Sec. 2. *Be it further enacted*, That all patents that may hereafter issue by virtue of any land warrant from the state of Virginia, returned to the register's office contrary to the provisions of this act, shall be null and void, any thing to the contrary notwithstanding.

Patents that may hereafter issue void in certain cases.

Sec. 3. *And be it further enacted*, That all entries, surveys and grants, founded on any of the laws of this commonwealth, which have been entered, surveyed and granted, for lands included within the lines of any survey or grant, surveyed or granted under, or by virtue of any law of Virginia, or any law of this commonwealth for extending the times of surveying the claims derived from the laws of Virginia, shall be void: nor shall any entry, survey or grant, made, surveyed or granted, by virtue of any of the laws of this commonwealth, vest any right or interest in the owner or owners thereof, to the lands included in such entry, survey or grant, where such entry, survey or grant has been made to interfere with any survey made previous to 29th day of November 1798, although not returned to the register's office within the time prescribed by the laws of this commonwealth for returning plats and certificates of surveys for claims derived from the laws of Virginia.

Certain entries, surveys & grants void.

1810.

*Platts, &c. not returned within the limited time forfeited.* Sec. 4. *And be it further enacted,* That all plats and certificates of surveys not returned to the register's office within the time herein limited, the lands described therein shall be forfeited to the commonwealth, and remain for the future disposition of the legislature: *Provided however,* that nothing in this act contained shall

*Proviso.*

*Oath as to time the survey was made.*

*Grants founded on plats and certificates void in certain cases.*

*Preamble.*

*Five years allowed to return plats and certificates.*

*Proviso.*

authorise the register of the land-office to receive into his office any plat and certificate or certificates of survey or surveys, in the preceding sections of this act mentioned, unless the person or persons entitled thereto, or his, her or their agent or agents, either before the register (who is hereby authorised to administer the oath or oaths hereby directed to be taken) or some justice of the peace, make affidavit that he, she or they verily believes the survey or surveys were made on or before the 29th day of November 1798; which affidavit the register shall file with the plat and certificate. And to prevent any injury, either to the commonwealth or any individual thereof, in consequence of the passage of this act, it is further enacted, that all grants founded on plats and certificates of survey or surveys, herein allowed to be returned to the register's office, shall be void, if in contravention to the foregoing section; and the facts may be enquired into by any person or persons affected by such grant or grants, any thing in this act to the contrary notwithstanding.

And whereas the time has expired for returning plats and certificates of surveys for lands derived from the laws of this commonwealth, on — day of November 1810, and it being thought just that individuals whose surveys have not been returned to the register's office in time, should have a further time to make their returns, and thereby prevent a forfeiture to the commonwealth; therefore,

Sec. 5. *Be it further enacted,* That a further time of five years be allowed to the owners of plats and certificates of surveys, for claims derived from the laws of this commonwealth, to return the same; and the register of the land-office is hereby directed to receive into his office all such plats and certificates of survey, whether the surveys were made before or since the first day of November 1810, or not: *Provided however,* nothing in this act shall authorise the register to receive into his office any plat and certificate of survey for lands granted by

the laws of this commonwealth, unless it is expressed in the certificate of survey, the nature of the claim, whether on removed certificate, additional or original claim; and if on a removed certificate, the owner or owners thereof shall make affidavit before the register, or some justice of the peace, (which shall be filed by the register with the plat and certificate) that he verily believes the survey offered to be returned does not interfere with any treasury warrant claim, military claim, settlement and pre-emption claim, nor with an actual settler's claim; but should the person or persons making the affidavit, be himself, herself or themselves an actual settler on the claim he, she or they may wish to return, he, she or they shall nevertheless have a right to return his, her or their claim, by first making affidavit as before directed; and in addition thereto, state that he, she or they was actually settled on the claim about to be returned, previous to the passage of this act.

1810.

Oath required.

And should any person or persons obtain a grant or grants for lands, in this act not allowed to be included in such grant or grants, the grant or grants shall be void as to so much as they may improperly include, and shall be so expressed in the grant, and the fact may be enquired into by any person or persons affected by such grant or grants.

Grants including lands improperly, to be so far void.

Nor shall any thing in this act authorise any person or persons to receive two grants for one warrant or warrants, where the whole of such warrant or warrants has been satisfied by any other grant or grants; and all grants issued under the provisions of this act, and contrary to this section, shall be void to all intents and purposes whatever.

Two grants shall not issue on one warrant.

- Sec. 6. *And be it further enacted*, That nothing in this act shall give a right to any person or persons who may receive their grant or grants for lands under the laws of Virginia, unless the survey or surveys, on which their grant or grants are founded, was made by virtue of an entry made with the proper officer, and within the time allowed by law for making such entry or entries; and all grants not founded on an entry made within the time allowed by law for making such entry or entries, and surveyed on or before 29th day of November, 1798, shall be void: *Provided however*, Nothing in this act shall prejudice the right, title, interest or

Survey must have been made with the proper officer else void.

Provide:

1810. claim of any infant or infants, *femes covert*, or of any person or persons of unsound mind, who may derive their right or rights to land, either from the laws of this commonwealth, or from Virginia; but they, and every of them, shall have three years from and after their several disabilities are removed, to perfect their claims; nevertheless, grants may issue to infants, on their guardian or guardians complying with the requisitions of this act.

#### CHAPTER CCXLI.

*An ACT to authorise the Trustees of the Woodford Academy to sell a part of their ground in or near Versailles.*

Approved January 25, 1811.

WHEREAS it is represented to the general assembly by the petition of the trustees of the Woodford academy, that they have in the town of Versailles, or adjacent thereto, about three acres of land, whereon they have erected a large building for the use of said academy; that they have no active funds for the payment of some monies yet in arrear on account of said building and the expences of the institution; that said three acres are more than sufficient for the use and accommodation of the faculty and students of said academy; and praying that they may be authorised to sell a part of said land: therefore,

*BE it enacted by the general assembly of the commonwealth of Kentucky,* That the trustees of the Woodford academy, for the time being, or their successors in office may, and they are hereby invested with full authority and permission to sell a part of the said parcel or lot of ground, so that the part to be sold shall not exceed one half acre, and shall not include the building or buildings as aforesaid erected, or any part thereof.

#### CHAPTER CCXLII.

*An ACT to alter the time of holding certain Courts in this Commonwealth.*

Approved January 25, 1811.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky,* That hereafter the circuit courts for Green county, shall be held on the fourth

Mondays in February, May and August in every year, and sit six juridical days at their February and May terms, and twelve at their August term, if the business thereof shall require it. 1810.

Sec. 2. The circuit court for the county of Adair shall hereafter commence and be held on the first Mondays in March, June and October in each year, and shall be authorised to sit six juridical days at their March and June terms, and twelve at their October term, if the business thereof require it.

Sec. 3. *Be it further enacted*, That hereafter the county of Barren shall be attached to, and form a part of the eighth judicial district; that the county of Livingston shall be attached to, and form a part of the seventh judicial district: that the circuit judges allotted, or hereafter to be allotted to those districts, shall respectively attend and preside in the circuit courts, directed to be holden in and for those counties, any law to the contrary notwithstanding.

Sec. 4. *And be it further enacted*, That the circuit courts in Union county, in the sixth judicial circuit, shall be held on the fourth Mondays in March, June and September in every year; and the courts for the county thereof, shall be held on the fourth Monday in every month, except those on which the circuit courts for the said county of Union, are directed to be held; any provision in the law establishing the said county to the contrary notwithstanding. And the courts for the county of Bath, shall be held on the fourth Monday in every month, except the months in which the circuit courts are to be held, the provision in the law establishing the said county of Bath to the contrary notwithstanding.

#### CHAPTER CCXLIII.

##### *An ACT for the benefit of Fanny Hey.*

Approved January 25, 1811.

She was a person of unsound mind, and inherited an undivided interest in some land claims of her ancestor. This act directed the circuit court of Madison to appoint a trustee, and so to manage her estate that she might in whole or in part be supported out of it.

1810.

## CHAPTER CCXLIV.

*An ACT allowing an additional Term to the Montgomery Circuit Court for the trial of Chancery Causes.*

Approved January 25, 1811.

When.

Sec. 1. *BE it enacted by the general assembly, That* the circuit court of Montgomery may and shall hold an additional term, to commence on the second Monday in January in every year, and continue eighteen juridical days, unless the business shall be sooner completed.

Jurisdiction confined to consideration of chancery cases.

Sec. 2. *Be it further enacted, That* no grand jury shall be summoned at the said January term, nor shall any pleas of the commonwealth, or any action or motion at common law whatever, be tried; but the said term shall be, and is hereby exclusively appropriated to the trial of cases and matters in chancery.

Proceedings declared valid.

Sec. 3. *Be it further enacted, That* all decrees and orders, whether interlocutory or final, made at the said January term, shall be as valid as if made at any other term of said court; and that all process in chancery, which may now be sued out, and made returnable to any term of said court, or any day of such term, may be sued out and made returnable to the said January term, or any day thereof.

Return of process.

Court to exercise chancery jurisdiction at the other terms.

Sec. 4. *Be it further enacted, That* nothing in this act shall be construed to prevent the trial of any cause in chancery at any of the ordinary terms of said court; but that the same may be taken up, and tried at any of said terms, as if this act had never been passed.

This act shall commence and be in force from and after the first day of May next.

## CHAPTER CCXLV.

*An ACT authorising the Trustees of the Town of Mountsterling to levy an additional Tax on the property of the said Town for the purpose of sinking a Public Well.*

Approved January 25, 1811.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky, That* the trustees of the town of Mountsterling are hereby authorised and empowered to levy an additional tax, to what is now allowed by law, on the real property in the bounds of said

town, not exceeding two hundred dollars, for the purpose of sinking a public well, walling and putting a pump in the same: and the said additional tax shall be collected and accounted for in the same manner that other taxes for said town are now collected and accounted for.

1810.

### CHAPTER CCXLVI.

*An ACT altering the time of holding the Bourbon Circuit Courts.*

Approved January 25, 1811.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That hereafter the circuit court for the county of Bourbon shall be held on the second Mondays in May, August and November, and sit eighteen juridical days, should the business thereof require it. Months: Length of term.

Sec. 2. *Be it further enacted,* That the chancery term for the said county, directed by law to be held in the month of March, shall in each year after the March term 1811, commence on the second Monday in January, and continue in session eighteen days, should the business thereof require it. Commencement of chancery term.

Sec. 3. The officers of said courts are hereby required to perform their respective duties. No suit, writ, recognizance, process or motion pending, or hereafter brought before said courts, shall be in any wise affected; but the same shall be and remain as effectual and valid as if this act had not passed; nor shall any thing herein contained, be construed to alter the time of holding county courts in said county. Duty of officers. Process, &c. not affected by the change. County court.

### CHAPTER CCXLVII.

*An ACT to amend an act authorising the erection of a Turnpike Gate on the Road leading from the mouth of Triplett's Creek, and from Lewis's Mill on Fox's Creek, in Fleming County, to the mouth of Big Sandy River.*

Approved January 25, 1811.

The act referred to is Chap. 160 of this Volume.

WHEREAS an act passed at the last session of the general assembly, authorising the erection of a turnpike gate on the road leading from the mouth of Triplett's Recital.

1810. creek, and from Lewis's mill on Fox's creek, in Fleming county, to the mouth of Big Sandy river, is found impracticable to be carried into execution; therefore,

Sec. 1. *Be it enacted by the general assembly of the* Former act re- *commonwealth of Kentucky,* That the said recited act be repealed. and the same is hereby repealed.

Sec. 2. *Be it further enacted,* That John M'Intire, Commissioners. James M. Graham, John Hunt, William P. Roper, John Gooding, John Jouitt and Thomas Iles, (or any four of them shall have the power of performing the requisitions of this act) be appointed commissioners; whose duty it shall be to let the roads from John M'Intire's, near the mouth of Triplett, on Licking river, from Wheeler's mill on said river, and from Lewis's mill on Fox's creek, in Fleming county, to the mouth of Big Sandy, to a keeper or keepers, by first advertising four weeks previous to letting the same, in the public papers printed in Paris, and in the Kentucky Gazette in Lexington, of the time and place of letting the same; and the said commissioners shall let the said roads to the person or persons undertaking the same, for the shortest time, exposing it to public auction, subject to the regulations hereafter mentioned.

Duty.

Sec. 3. *Be it further enacted,* That the said commissioners shall take bond and sufficient security, in the penalty of five thousand dollars, payable to the commonwealth of Kentucky, for the due and faithful performance of putting the said roads, intersecting the state road at its present fork, in good repair for horses, waggons and carriages to pass; and to make and keep up, during the time he or they keeps the same, all necessary bridges and causeways; and dig down the hill sides, where said roads go on sideling ground, so as that the water shall run on the upper side, and keep said roads in good repair for the time he or they keeps the same.

Keeper to give bond.

Penalty.

Condition.

Sec. 4. *Be it further enacted,* That the person or persons undertaking the said roads, shall have the privilege of erecting a turnpike gate on any part of said roads he or they may think proper, so as not to be within ten miles of the Little Sandy salt-works. And for the purpose of procuring land on which to erect the same, the said person or persons undertaking the same, shall, after making a selection of a place to erect said gate, apply to the county court of the county wherein the same is

Keeper may erect a gate.

Where.

Procure land.



situate, who shall have power to summon all parties interested, and issue a writ of *ad quod damnum* to ascertain the value of said land, and who may condemn any quantity of land, not exceeding twenty acres, as they may think necessary; which damages shall be defrayed by said keeper or keepers; and shall at the expiration of said contract be vested in the commonwealth. 1810. Quantity.

Sec. 5. The keeper or keepers shall be entitled to demand and receive the rates and toll as follows: For each person, 6 1-4 cents; for every horse, mare or mule, 6 1-4 cents; for every carriage or cart with two wheels, 25 cents; for every carriage or waggon with four wheels, 50 cents; for every head of neat cattle, 3 cents; for every head of hogs, 1 cent. Every post rider, express and their horse, every child under ten years of age, every woman residing within ten miles of said gate, every person packing salt from little 'Sandy salt-works, and their horses or mules, shall be exempted from toll. Tolls. Persons exempt. Every horse or horses necessarily attached and harnessed to a carriage, and two persons to each carriage, shall be privileged for the conveyance of each carriage. And if any person shall forcibly pass or attempt to pass the said turnpike, without paying the toll aforesaid, or avoid or attempt to avoid it, he or they shall forfeit and pay ten dollars; which may be recovered before any justice of the peace in this commonwealth. Penalty for certain violations.

Sec. 6. The person or persons undertaking to put said roads in repair, shall have the same done on or before the first day of November 1812, and shall not receive toll from any person or persons whatever, until he shall procure from the commissioners aforesaid a certificate of the said road's being in sufficient repair, as in the opinion of said commissioners to entitle him or them to toll; and which certificate may be granted at any time previous to said first day of November 1812. Period after which the road shall be repaired.

Sec. 7. *Be it further enacted*, That the bond required by this act to be taken from the keeper or keepers of said roads, shall be returned by the said commissioners to the clerk of the circuit court of Fleming; and in case of failure to comply with the conditions thereof, the same proceedings are hereby authorised to be had thereon in said court, as are allowed by law to be had against defaulting public debtors. Keeper's bond to be returned to court.

1810. *Sec. 8. Be it further enacted,* That upon the resignation or death of any of the said commissioners, the same being made known to the court of the county wherein said commissioner resides, the said court shall appoint some person residing in the same county, who shall be vested with the same powers as are given to the commissioners by this act; and they shall be allowed one dollar and fifty cents each per day, for their services, to be paid by the keeper or undertaker of said roads and turnpike.
- Court to fill vacancies.
- Compensation of commissioners.
- Sec. 9. Be it further enacted,* That the said commissioners shall meet at the house of Joshua Knapp, at the forks of said road, on the first day of March next, or as soon thereafter as convenient.
- Commissioners when to meet.

#### CHAPTER CCXLVIII.

*An ACT to amend an act entitled "an act to reduce into one the several acts for the conveyance and division of lands," passed in 1797.*

Approved January 26, 1811.

The act here referred to will be found in Volume I, page 689.

- Sec. 1. BE it enacted by the general assembly,* That when the executors named in any will heretofore executed, or hereafter executed, have declined, or may decline the executorship, and such will authorises the executors, or any of them, to make conveyance of the lands of the testator, or any of them, sold by the testator, that it shall be lawful for the county court of the county where the land sold lies, upon being satisfied of the payment of the consideration, to appoint, on the application of any person entitled to a conveyance under said will, three commissioners; who, or any two of them, shall make conveyance of the land sold to the person entitled thereto, pursuant to the contract; which shall be as effectual as if the conveyance had been made by the testator in his life time.
- When executors may or have declined to act, commissioners appointed to convey land.
- And it shall be the duty of the county court, to cause the contract upon which the conveyance is to be made, to be filed in the office, and recorded at the time the commissioners are appointed for the purpose aforesaid.
- Contract to be recorded.

- Sec. 2. Be it further enacted,* That henceforth when any person having a title to any real estate of inheritance, shall die intestate as to such estate, and the same shall descend and pass in parcenary to the heirs of the said
- When real estate descends in parcenary to heirs, commis-

intestate, unincumbered by claim of dower, that the county court of the county where the intestate may die, or where the estate so descended, or any part thereof, lies, may, on the application of the said heirs, or anyone of them, appoint three fit persons commissioners, to make partition of all the real estate so descended amongst the said parceners; and thereupon the said commissioners, being first duly sworn before some justice of the peace faithfully to perform said duty, shall proceed with all convenient dispatch to lay off by metes and bounds, or in any other proper manner, the proportion of each parcener according to right and justice, and make report of their proceedings in the premises to such court; and if no exception is sustained to the said report, the said commissioners shall be empowered by such court to convey to each parcener, in fee simple, the land or lands allotted to such parcener in said report; and such partition and conveyance shall be as valid and effectual as if the same had been made in any manner now authorised by law: *Provided nevertheless*, that if any such parcener be an infant, the application for partition shall be made by the guardian; and if a *feme covert*, by her husband: *And provided further*, that no application for partition shall be granted, unless it appears by affidavit, produced to the court, that the applicant has given reasonable written notice to every other person or persons interested in said partition, of the intended application; and it shall be sufficient where an infant is concerned, to notify the guardian; and where a *feme covert* is concerned, to notify the husband.

1810.

Commissioners to be appointed to make partition.

Commissioners to take oath.

Their duty.

Proviso for infants and *femes covert*.

Sec. 3. That when such estate, as is mentioned in the preceding section, shall descend in parcenary to the heirs of an intestate incumbered by dower claim, that, as well the residue of such estate, after assignment of dower, as the estate so assigned for dower, after the determination thereof, shall and may be partitioned and conveyed, according to the provisions of said section; and such partition and conveyance shall be in every respect subject to the same rules and regulations, and be attended with the same effect, as a partition and conveyance made by virtue of the said preceding section.

Regulations where such estate is unincumbered by dower.

Sec. 4. *Be it further enacted*, That slaves may be divided amongst the heirs of an intestate, pursuant to the provisions of the preceding sections, as far as they may

Slaves may be divided.

1810. be applicable, the party or parties administering on the estate of the intestate, consenting thereto.

Not to affect  
advancements.

Sec. 5. *And be it further enacted*, That nothing herein contained shall be construed to repeal any law now in force, on the subject of advancements made by the intestate, in his life time, to any person or persons claiming or receiving the benefit of this act.

Partition sub-  
ject to a revision  
of a court of  
equity.

Sec. 6. *And be it further enacted*, That any partition or division, made by virtue of this act, shall be subject to the control and revision of a court of equity, where fraud has been practised in obtaining the same, or where the partition is unjust, or where any parcener or other person, affected by such partition or division, may lose his portion of the estate, or any part thereof, in consequence of the defect of the title.

Commissioners'  
pay.

Sec. 7. *Be it further enacted*, That every commissioner, acting by virtue of this act, shall receive one dollar per day for every day's service in the premises, to be paid in the first instance by the applicant for the partition, who shall be entitled to receive from the other parceners concerned, their proportion of such expense, if the partition is established.

Joint tenants,  
&c partitioned,  
and how.

Sec. 9. *And be it further enacted*, That when two or more persons are joint tenants, or tenants in common of land, and the said tenants are part residents and part non-resident, that partition may, on the application of either of them, be made between them, pursuant to the third section of the act entitled "an act to reduce into one the several acts for the conveyance and division of lands," passed in 1797, any thing in this act to the contrary notwithstanding.

## CHAPTER CCXLIX.

*An ACT prefixing three additional days, (for the trial of Chancery Causes) to the Clarke Circuit Court.*

Approved January 26, 1811.

Commence-  
ment of the  
term.

*BE it enacted by the general assembly of the commonwealth of Kentucky*, That three days (exclusive of Sunday) shall be prefixed to each term of the Clarke circuit court, for the purpose only of hearing and determining chancery causes: and the circuit and assistant judges shall hereafter attend and commence their

said term on the Thursday next before the fourth Monday in the months of March, June and September annually; and the clerk of said circuit court shall make out a chancery docket accordingly: *Provided however,* that nothing in this act shall prevent the court from hearing any chancery cause on any other day of said term as heretofore: *And provided also,* that all business which now is or hereafter may be depending in said court, shall be commenced and determined in manner and form as heretofore.

1810.

Docket to be made out.

Provido.

This act shall commence and be in force from and after the end of the next March Clarke circuit court.

Commencement.

## CHAPTER CCL.

*An ACT to authorise the conveyance of Land from the Heirs of William Mitchell, deceased, to Cornelius Shuck.*

Approved January 26, 1811.

## CHAPTER CCLI.

*An ACT authorising the County Court of Jefferson County to sell part of the Public Ground.*

Approved January 26, 1811.

## CHAPTER CCLII.

*An ACT for the relief of Thomas Salsbury, of Muhlenburg County.*

Approved January 26, 1811.

He had two certificates covering the same tract of land; on one of them he had obtained a patent, and the other had been sold and he re-purchased it. This act provided against any future sale of it.

## CHAPTER CCLIII.

*An ACT to alter the places of holding Elections in the precincts in Bracken and Grayson Counties*

Approved January 26, 1811.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky, That all elections directed by law to be holden at the house of James Putman in the*

1810. precinct in Bracken county, shall hereafter be held at the house of Daniel Threlkeld in said precinct.

Sec. 2. *And be it further enacted*, That all elections for that part of Grayson county taken from Ohio county, shall be hereafter held at Jacob Myers's; any law to the contrary notwithstanding.

#### CHAPTER CCLIV.

*An ACT to amend the several acts concerning the Turnpike and Wilderness Road.*

Approved January 26, 1811.

Recital.

WHEREAS a number of waggons and pack-horses, passing to and from the lower Goose creek salt-works, in Clay county, travel but a few miles along the Wilderness road, and have to pay full toll at the turnpike on said road; therefore,

Keeper to note the sums received of particular persons.

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That it shall be the duty of the keeper of the said turnpike, to note in a book to be by him kept for that purpose, all monies by him received from such waggoners and pack-horse-men as may be travelling to and from the said lower Goose creek salt-works; one half of which money shall be appropriated to clear out and repair the road leading from the said Wilderness road, at Andrew Craig's, to the said lower Goose creek salt-works; and the said keeper of the turnpike shall, once in every year, make affidavit before some justice of the peace, of all monies received by him aforesaid, which affidavit he shall transmit to the Clay county court.

How appropriated.

Clay county court to appoint an overseer.

Sec. 2. *Be it further enacted*, That it shall be the duty of the Clay county court, from time to time, to appoint some fit person to clear out and keep in repair the said road, leading from Andrew Craig's to the lower Goose creek salt-works, agreeably to the laws and regulations now in force, relative to the Wilderness road: and it shall be the duty of the said keeper of the turnpike, to pay over from time to time, one half of all monies hereafter received by him as aforesaid, any law to the contrary notwithstanding.

XIX. YEAR OF THE COMMONWEALTH.

243

CHAPTER CCLV.

1810.

*An ACT concerning the Montgomery Academy.*

Approved January 26, 1811.

*BE it enacted by the general assembly of the commonwealth of Kentucky, That the trustees of the Montgomery academy, are hereby authorised and empowered, to sell and convey to the purchaser, any number of acres of land not exceeding four hundred, out of the donation of the state to the Montgomery academy, in addition to what they are now allowed by law to dispose of; and apply the proceeds, or so much thereof, to the use and benefit of Justinian Cartwright, for his services, as will be sufficient to pay the necessary expences in perpetuating testimony, and establishing the said donation to the Montgomery academy.*

CHAPTER CCLVI.

*An ACT supplementary to an act authorising a Lottery for improving the navigation of the Kentucky River.*

Approved January 26, 1811.

*BE it enacted by the general assembly of the commonwealth of Kentucky, That the managers or a majority of them appointed by an act of the present session of the general assembly, authorising a lottery for improving the navigation of the Kentucky river, to carry into effect the said lottery, shall hold their first meeting in Lexington, on the second Monday in April next, at the Kentucky Hotel; and shall then make provision for their future meetings, and any farther regulations necessary to carry the said recited act into complete effect.*

CHAPTER CCLVII.


*An ACT for the better regulation of the Town of Lexington.*

Approved January 26, 1811.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky, That the seven trustees who shall be elected for the town of Lexington, on the first Saturday in January, 1811, agreeably to an act relative to said town, passed on the 19th day of December, in the year 1796, shall continue in office during the ensuing year; and that an election shall be held on the first*

*Term of service of certain trustees;*

*Additional trustees to be elected, and when*

1810.  Saturday in March next, at the court-house in said town, for the purpose of electing four additional trustees, to continue in office for the same period.

Persons entitled to vote for trustees. Sec. 2. *Be it further enacted*, That it shall and may be lawful for all persons residing within the bounds of the town of Lexington, who are, or may hereafter be entitled to vote for representatives to the legislature of this state, to meet at the court-house in said town, on the first Saturday in the month of January, in the year one thousand eight hundred and twelve, and on the same day in every succeeding year, for the purpose of electing eleven trustees; which election shall be conducted by one of the late trustees, to be appointed by the board for that purpose. Ten days previous notice thereof shall be advertised in all the public newspapers in said town, by order of the board; and the return of the persons so elected, shall be made to the clerk of the said board, which he shall record in their books.

When elections to be held.

Number of trustees.

Notice of elections.

Return of trustees elected.

Residence of trustees. Sec. 3. No person shall be capable of being elected, or of acting as a trustee, who is not an inhabitant of said town, or the limits thereof.

Vacancies in the board, how filled. Sec. 4. Vacancies occasioned by death, disqualification, resignation or otherwise, shall be supplied by elections, to be made in manner herein before directed, on a day to be appointed by the remaining trustees, and return thereof made in the manner before directed.

May levy a poll tax. Sec. 5. The said trustees shall be and are hereby authorised to assess upon each free male inhabitant, above the age of twenty-one years, within the bounds of the town aforesaid, a poll tax, not exceeding one dollar per annum; and also upon every male slave above the age of eighteen years, a like tax, not exceeding one dollar per annum. They are also further authorised to levy upon the property, real and personal, within the bounds aforesaid (except male slaves above the age of eighteen years, who shall pay no other than the poll tax) such sum as they may judge necessary for the benefit of the said town, not exceeding twenty-five cents for every hundred dollars of the assessed value of such property; to make provision for the collection of and accounting for all taxes which they are hereby or may be hereafter empowered to levy, in such manner as they may deem proper, by distress or otherwise. And in addition to the powers already granted to the said trustees, they

May also levy a tax on property *ad valorem*.

May enact by-law.



shall have power to enact all such by-laws, ordinances and regulations as they may deem necessary for the good government and police of said town: *Provided*, the same be not contrary to the laws and constitution of this state: *And provided also*, that every such by-law, ordinance or regulation, and also the apportionment of taxation, shall have been approved of by a majority of the whole board elected as aforesaid: *And provided further*, that no by-law, ordinance or regulation shall take effect until the same shall have been approved at two stated meetings of said board, and published three weeks at least in some one or more newspapers in the said town.

1810.

Proviso.

Proviso.

Sec. 6. *Be it further enacted*, That in the expenditure of the money hereby authorised to be raised, the trustees aforesaid may make such dispositions and appropriations as they may deem most conducive to the interest and well being of said town.

Disposition of the tax.

Sec. 7. *Be it further enacted*, That the trustees of said town are further authorised to make any appropriation out of the funds raised as aforesaid, as they may deem expedient and necessary, to the directors of the Union Fire Company. And said directors are hereby required to publish in some newspaper in Lexington, at least every six months, a report of the situation of the fire utensils, &c. and also the manner in which any monies granted them by the trustees, have been appropriated.

Appropriations may be made to the fire company.

Directors of the fire company to publish semi-annual reports.

Sec. 8. For the transaction of ordinary business, a majority of the trustees shall be sufficient to form a quorum.

Number to constitute a quorum.

All acts or parts of acts coming within the purview of this act, shall be and the same are hereby repealed.

#### CHAPTER CCLVIII.

*An ACT authorising the copying, repairing and making out certain Books and Records in the Register's Office, and making provision for the payment thereof.*

Approved January 23, 1811.

WHEREAS it appears from the report of the committee appointed to examine the register's office, that in many instances copying and rebinding are necessary, and that some important alphabets have been commenced by the register, and it being reasonable that a compensation should be made therefor:

1810.

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That it shall be the duty of the register of the land-office, and he is hereby directed to have the said copying done, to procure the aforesaid binding, and complete the aforesaid alphabets on the plan commenced. And the auditor of public accounts is hereby directed, upon the book-binder's producing to him a certificate from the register that the same is completed, to issue his warrant for the amount thus certified, which is not to exceed the customary price of binding; and the register is hereby directed to procure the binding to be done on the best terms in his power.

Sec. 2. *Be it further enacted*, That upon the completion of any of the aforesaid re-copying, or each or either of the alphabets stated in the aforesaid report, the auditor is hereby directed, upon application by the register, to ascertain the number of words, by general calculation, in such re-copying, and to issue his warrant therefor, at the rate of one and an half cent for every twenty words: and to ascertain the number of names alphabetized, and for each name and the description annexed, to issue his warrant at the rate of one and an half cent therefor.

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### CHAPTER CCLIX.

*An ACT farther to regulate the payment of the debt due this Commonwealth for the sale of her vacant Lands.*

Approved January 28, 1812.

Sales of lands  
suspended.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the sales of lands directed to be made by the register of the land-office, under the act of assembly approved the 18th day of January 1810, entitled "an act to extend the time for, and farther to regulate the debt due the commonwealth for the sale of vacant lands," shall be and the same are hereby suspended until the first Monday in June 1812; and the auditor and register shall respectively proceed to perform the duties required under the before recited act, on the said first Monday in June 1812.

Sale to be made  
after a given  
period.

Sec. 2. That the instalments which by the existing law would become due on the first Monday in June next, shall be payable on the first Monday in June 1812; and each instalment shall be payable annually on or be-

When next in-  
stalment paya-  
ble.

fore the first Monday in June in each year thereafter, until the whole is paid.

1810.

Sec. 3. That where any tract of head-right land shall have been stricken off to the state at the sales heretofore made, the owner or owners of the said claim shall have the privilege of redeeming the same, on or before the first Monday in June 1812, by paying into the treasury the instalment and interest for which the said claim was sold, together with an interest at the rate of twenty-five per centum per annum, from the day of sale to the day of redemption, and costs of sale.

When lands stricken off to state may be redeemed.

Terms:

Sec. 4. That every person indebted to this state for any land acquired under any law of this commonwealth, as well where the land has been sold to the state as where no sale has been made, who, shall pay into the public treasury, within twelve months from the passage of this act, the whole amount of the state price, or the balance, in case of a partial payment already made, due or to become due, shall be entitled to a discount of the interest due or to become due thereon.

Interest remitted on paying at a certain time.

Sec. 5. *Provided always*, and it is hereby expressly declared and enacted, that no claim to land, founded on, or derived under or by virtue of any county court certificate, as an additional, original or removed claim, upon which there is no actual settlement and residence, at the passage of this act, made by the owner of such certificate, or some person claiming under him or her, the owner or owners thereof, taking, using or falling under the indulgences, or either of them, for payment, deduction of interest, or redemption herein granted, shall, after the owner so takes, uses, or by failure to pay, falls under the said indulgences, or either of them, have any efficacy, priority or virtue in law or equity, in any conflict or contest with any other adverse claim, located, entered or surveyed by virtue or colour of any warrant, certificate or entry whatever, where such adverse claimant, or any one occupying under him, is actually seated on the land at the passage of this act.

Provision in which a distinction is recognized between claimants upon actual settlement and those without such settlement.

Sec. 6. *Provided however*, That nothing in the preceding section shall be construed to impair or affect the rights of persons claiming under certificates founded upon a previous actual settlement, made in good faith; nor to impair or affect the rights of persons holding under an additional claim, founded on an original certifi-

Construction of preceding section.

1810. cate, for land upon which an actual settlement and occupancy had been made by any claimant under such original certificate, at any time before the additional certificate was granted; of which settlement, however, the certificates or certificate of the commissioners, or of the county court, shall not be evidence.

Sec. 7. That where any person shall be actually settled, at the passage of this act, upon a tract of land, claiming the same by a location or survey, less than four hundred acres, claiming also a quantity adjoining, not exceeding four hundred acres, such settler shall be entitled to the benefit of the fifth section hereof, as to such adjacent claim, not exceeding four hundred acres.

Sec. 8. And where any person is actually settled, at the passage of this act, upon a tract of land of four hundred acres, or any smaller quantity, claiming by entry or location, not sufficiently descriptive of the land intended to be appropriated, and not reduced to certainty by actual survey, such settler shall nevertheless be entitled to protection contemplated in the fifth section of this act, for his quantity of land, not exceeding four hundred acres, when laid off, as nearly in a square, with the lines to the cardinal points, and the dwelling seat at the intersection of the diagonals, as prior actual settlements and military claims will admit.

Sec. 9. The auditor of public accounts shall keep an account and record of the sums paid on any tract of land, and of the time of payment; and a certificate from the said department, signed by the auditor, shall be evidence of the sums paid, the time of payment, deduction of interest, or of a failure to pay within the times prescribed by law, as the case may be.

Sec. 10. That where any person obtains a quietus for the price due the commonwealth upon any tract of land, by taking the benefit of this act, either as to extension of the time for payment, or for redemption, or for deduction of interest, the auditor shall recite it in the quietus, and the register of the land-office shall recite the same in the grant.

## CHAPTER CCLX.

*An ACT for the benefit of John K. Mangham.*

Approved January 29, 1811.

This act authorized him to locate and carry into grant a tract of land not exceeding 100 acres, adjoining the tract he lived on.

## CHAPTER CCLXI.

1810.

*An ACT further to promote the Navigation of Salt River and its navigable branches.*

Approved January 29, 1811.

WHEREAS the navigation of the different branches of Salt river, is of great importance to the citizens of that part of this commonwealth; but owing to the obstructions therein, whereby many losses are incurred, many are deprived of its advantages: for the purpose of removing said obstructions,

Recitals

Sec. 1. *Be it enacted by the general assembly,* That it shall and may be lawful for William R. Hynes, James Smiley, John Caldwell, John W. Beckwith, James Crutcher, Elias Davidson, Nathaniel Wickliffe, Samuel Smiley and Samuel M'Clean, or a majority of them, to raise by lottery, in one or more classes, as to them may appear necessary, any sum not exceeding five thousand dollars, to be applied to the purposes hereafter mentioned; and the said William R. Hynes, James Smiley, John Caldwell, John W. Beckwith, James Crutcher, Elias Davidson, Nathaniel Wickliffe, Samuel Smiley and Samuel M'Clean, are hereby bound to pay to the fortunate person the amount that each person shall be justly entitled to by the event of said lottery: and in case of failure, shall be liable to the action of the party aggrieved, or so many of them as were concerned in carrying the said lottery into effect. The drawing of the said lottery shall be done in Bardstown, in the county of Nelson, and shall not commence unless two of the justices of the peace in said county are present, whose duty it shall be to see that the same is fairly and properly conducted. And each of the drawers, examiners and clerks, and all others concerned in drawing said lottery, shall, before the same commences, take an oath to act fairly and impartially in the discharge of their several offices, which any justice of the peace in said county may administer. If the said lottery is not drawn within two years from the passage of this act, it shall be lawful for the purchasers of tickets to demand and receive the money they have respectively paid, from the persons receiving the same.

Managers appointed to raise 5000 dollars.

Their duty,

Where lottery shall be drawn.

Justices of the peace, their duty.

How money to be refunded.

Sec. 2. *Be it further enacted,* That upon the receipt of the monies produced by the said lottery, the said com-

How money to be applied,

1810.

missioners, or a majority of them, shall by public advertisement or otherwise, proceed to let out to the lowest bidder, the removal of all obstructions in the several branches of Salt river, from their present highest points of navigation to its mouth, to any individual or individuals that will undertake the same; who shall, before they proceed to work thereon, give bond and security to the managers aforesaid, for the faithful execution of their duties as herein described, according to the undertaking they shall make; which may, upon breach thereof, be put in suit by said managers, and a recovery had according to their failure.

Further duty of  
managers.

Sec. 3. The said undertakers shall clear the said river as aforesaid, clear of all logs, brush, trees, rocks, fish-traps, shrub all points of islands, and remove other impediments therein; and the time for its performance shall be limited at the discretion of said managers.

#### CHAPTER CCLXII.

*An ACT for the relief of Andrew Biggs.*

Approved January 29, 1811.

An indictment was exhibited against him in Montgomery county for murder. This act provided for a change of venue to Harrison county.

#### CHAPTER CCLXIII.

*An ACT concerning Witnesses in certain cases, and Venire-Men.*

Approved January 29, 1811.

Witnesses' al-  
lowance.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That every witness summoned to appear at any court, or to attend commissioners, referees, or upon any survey of land, shall be paid by the person or persons at whose suit the summons issued, fifty cents for every day's attendance upon such summons.

Allowance to  
venire men.

Sec. 2. *Be it further enacted,* That where the *venire*, or any of them, in the trial of any criminal cause, in the circuit or county courts, may be challenged, and bystanders summoned and sworn in their stead, they shall be entitled to the same pay as is at present allowed to the *venire* in similar cases.

# XIX. YEAR OF THE COMMONWEALTH.

251

Sec. 3. And in all cases where any of the officers of government, by subpoena *duces tecum*, are required to attend with the records of their office or offices, before any court, commissioners or referees, shall be entitled, from the person at whose instance such subpoena issued, one dollar per day for each day's attendance, to be taxed in the bill of costs, as now directed by law.

1810.

Allowance to officers of government attending under subpoena.

Sec. 4. And be it further enacted, That the clerks' certificates for all allowances to witnesses, shall have the same force as officer's fee-bills now have; and be collected by the sheriffs and constables, and accounted for in the same manner, to the persons entitled thereto.

Allowances to have the force of fee bills.

## CHAPTER CCLXIV.

*An ACT giving the Justices of the Knox, Boone, Estill and Clay County Courts, further time to appropriate their donation Lands.*

Approved January 29, 1811.

BE it enacted by the general assembly of the commonwealth of Kentucky, That the justices of the county courts of Knox, Boone, Estill and Clay, shall have the farther time of six months from the passage of this act, to procure to be located, surveyed and patented, so much of their donation lands, in addition to the quantity already located, as will make in the whole six thousand acres, on any vacant land in this commonwealth, except the lands to which the Indian title is extinguished by the treaty of Tellico, and the lands lying west of the dividing ridge between the waters of Cumberland and Tennessee rivers: *Provided however*, that the justices of the county courts aforesaid, shall be regulated by the laws now in force granting donation lands to other counties in this commonwealth: *Provided however*, that in locating the same, they shall not interfere with any actual settler, with two hundred acres around him, to be laid off as near a square as the adjoining claims will admit: *Provided*, that nothing in this act nor in any other act contained, shall be so construed as to authorise the locating and surveying more than six thousand acres of land, for any one seminary within this commonwealth. And the register of the land-office is hereby prohibited from issuing grants to or for the benefit of any one seminary, for more than six thousand acres as aforesaid: *Provided*.

1810.

*also, that nothing in this act contained shall be construed to prevent any entry or survey, hereby permitted to be made, to interfere with any entry, survey or patent, made under any of the laws of Virginia or of this state.*

#### CHAPTER CCLXV.

*An ACT to alter the time of holding the Lewis Circuit Courts, and to extend the November Term of the Washington Circuit Court.*

Approved January 29, 1811.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky, That the circuit court holden for the circuit of Washington, shall, at the November term of said court, be holden and continue twelve juridical days, if the business in said court may require the same.*

*Sec. 2. Be it further enacted, That the last six days of said term shall be exclusively appropriated to the trial of chancery causes: Nevertheless, it is provided, that nothing contained in this section shall be so construed as to prevent the court from trying chancery causes on the first six days of said term, if the court shall choose so to do.*

*Sec. 3. Be it further enacted, That the circuit court for the county of Lewis, shall be held on the third Mondays in June and September, instead of the fourth Mondays in July and October. And the county courts for said county shall, after the first day of March next, be held on the same Mondays in every month in which circuit courts are respectively directed to be held, except the months in which the circuit courts are holden.*

#### CHAPTER CCLXVI.

*An ACT to alter the time of holding the Hardin, Bullitt and Nelson Circuit Courts.*

Approved January 29, 1811.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky, That hereafter the fall term of the circuit court for the county of Hardin, shall commence and be holden on the first Monday in September, and continue twelve juridical days, if the business may require it.*



Sec. 2. *Be it further enacted*, That the fall term of the Bullitt circuit court, shall hereafter commence on the third Monday in September in every year, and continue to sit twelve juridical days, if the business require it. The county courts for the said county shall be holden on the first Monday in every month, except the months in which the circuit courts for said county are holden.

1810.

Sec. 3. *Be it further enacted*, That the fall term of the circuit court for the county of Nelson, shall commence and be holden on the first Monday in October, and continue to sit twenty-four juridical days, if the business in said court shall require it.

Sec. 4. *Be it further enacted*, That nothing in this act contained shall be so construed as to alter the time of holding the county courts of the aforesaid counties of Hardin and Nelson.

This act shall be in force from and after the first day of March next.

#### CHAPTER CCLXVII.

##### *An ACT for the relief of John Fowler.*

Approved January 29, 1811.

He had an equitable title to some lands lying in Campbell county, patented to Jacob Roblammon, who was dead, and his heirs at law aliens. This act provided means for him to prove these facts in Campbell circuit court, get a commissioner appointed and have a deed made. It relinquished to him the commonwealth's right by escheat.

#### CHAPTER CCLXVIII.

##### *An ACT for establishing a mutual Assurance Society against Fire on Buildings in this Commonwealth.*

Approved January 29, 1811.

WHEREAS from the great losses sustained by the ravages of fire, it is expedient to adopt some mode to alleviate the calamities of the unfortunate, who may suffer by that destructive element: Preamble:

Sec. 1. *Be it therefore enacted by the general assembly*, That an assurance be established in Lexington, to be called and known by the name of "The Kentucky Mutual Assurance Society against Fire on Buildings and Property contained therein within this Commonwealth;" the principles whereof shall be—That the ci- Style of company.

1810.      citizens of this state may insure their buildings and property against losses and damages occasioned accidentally by fire ; and that the insured, pay the losses and expenses in proportion to the sum insured, by each member of the society : and that subscriptions be opened under the direction of Alexander Parker, Henry Purviance, Thomas January and Thomas T. Barr, in Lexington ; and under the direction of John Instone and Daniel Weisiger, in Frankfort ; John Gwathmey and Thomas Prather, in Louisville ; James Smiley and William P. Duval, in Bardstown ; Richard Dallam and Amos Edwards, in Russellville ; David Bell, Daniel M'Ilvoy and Richard Davenport, in Danville ; Benjamin Bayles and Adam Beatty, in Washington ; John Hickman and Valentine Peers, in Paris ; Thomas C. Howard and William Irvine, in Richmond ; and in such other places as may be thought necessary, by a committee to be appointed at the first meeting of the members. As soon as the sum subscribed for shall amount to one million dollars, notice shall be given by advertisement, of a day fixed for the meeting of the subscribers in Lexington ; who may then meet either in person or by proxy, and conclude upon such by-laws, rules and regulations, not repugnant to the constitution or laws of this state, or of the United States, as they, or a majority of the members present, may think best ; and shall then proceed to elect a president and twelve directors, any five of whom shall constitute a board to transact the business of the society ; and thenceforth they shall be considered as a body politic, incorporated by this act, under the denomination aforesaid ; and by that name shall have succession, and may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court of law or equity in this commonwealth or elsewhere ; and may buy and sell, do and execute every other thing relative to the society. But none of the subscribers or their agents, shall be sued individually, for any thing that relates to the Assurance Society in general. They shall have power to lease or purchase ground, for the sole purpose of erecting an office or offices, and such other buildings as may be necessary for the institution. And whenever the said company shall acquire such sum of money, as should in their opinion be rendered productive of profit, the same shall be em-

*The object of the institution.*

*Subscriptions to be opened under the direction of certain persons.*

*Meeting of the commissioners to be advertised*

*Members to make by-laws and to elect president and directors.*

*Considered a body politic.*

*Power.*

*Surplus funds how appropriated.*

ployed in the purchase of stock in the Bank of Kentucky. 1810.  
 The society, or a majority of those present at a general meeting, shall be at liberty from time to time to alter and amend the by-laws, rules and regulations, as they may judge necessary. They shall agree upon certain premiums, or authorise the president and directors so to do, to be paid by the person or persons who shall apply to have their property insured; which shall be deposited and kept as a fund for the purpose of making immediate reparation to such persons as may sustain losses or damages by fire, after proof that the fire actually happened, unless it be proved that the proprietor of the buildings or property insured, did wilfully occasion the fire, directly or indirectly. If the funds should not be sufficient, a reparation among the whole of the persons insured, shall be made; and each shall pay, on demand of the cashier, his, her or their share, according to the sum insured, and the rate of hazard at which the buildings stand, agreeable to the rates of the premiums; for which purpose, it is hereby declared, that the subscribers, as soon as they shall insure their property in the assurance society aforesaid, do mutually for themselves, their heirs, executors, administrators and assigns, engage their property insured as security, and subject the same to be sold, if necessary, for the payment of such quotas. That these quotas shall always be so rated as to raise and keep up a fund, so that the interest thereof may be deemed by the president and directors sufficient to pay the annual losses and expenses. If such quotas are found necessary, the president is to publish in some newspaper, how much the quota is, of each rate of hazard for every hundred dollars; whereupon the insured shall pay the same on application to the cashier in whose office the property is insured. Whensoever any person or persons shall neglect to pay such quotas, the assurance to him made shall cease and discontinue, from the day on which they became due until paid. To the end that purchasers or mortgagees of any property insured by virtue of this act, may not become losers thereby, the subscriber selling, mortgaging, or otherwise transferring such property, shall, at the time, apprise the purchaser or mortgagee of such assurance; and endorse to him or them the policy thereof. And in every case of such change, the purchaser or mortgagee shall be

Power to alter and amend by-laws.

To agree upon certain premiums.

Funds, how appropriated.

Lien upon property insured for premiums.

Penalty on failing to pay quotas.

Upon a transfer of property insured, notice to be given transferee.

1810.

Interest to be  
paid by subscri-  
bers in advance

considered as a subscriber in the room of the original; and the property so sold, mortgaged, or otherwise transferred, shall still remain liable for the payment of the quotas, in the same manner as if the right thereof had remained in the original owner. The subscriber in default of paying the premiums, at the times fixed therefor, shall, on request of the cashier, be compelled to pay the same with six per centum interest thereon to the day of payment; and their property shall be liable to be sold for the same as aforesaid: *Provided*, that no lien shall be given by this act, to affect the rights of purchasers or mortgagees, without actual notice, unless the policy of insurance or assurance shall have been previously recorded in the county court, in which the property insured or assured is situate.

Property insur-  
ed may be with-  
drawn.

Sec. 2. *Be it further enacted*, That any subscriber, purchaser or mortgagor of property insured by virtue of this act, shall be at liberty, on application to the cashier in whose office the property is insured, to withdraw such insurance; and the policy thereof to him or them shall cease and discontinue from the day on which application is made as aforesaid: *Provided*, that notice thereof shall be given in writing to the cashier, three months at least previous to such application: *And provided also*, that the withdrawing such insurance shall not release the property insured as aforesaid from the payment of all such quotas as may be then due agreeably to the provisions of this act.

Notice to be gi-  
ven of intention  
to withdraw.

Restricted from  
the exercise of  
banking privi-  
leges.

Powers retained  
by the legisla-  
ture.

Who considered  
members of the  
corporation.

Sec. 3. *And be it further enacted*, That if the said society shall at any time attempt to exercise banking privileges, or otherwise violate the true intent and meaning of this act, the legislature shall have full power to repeal this act, or from time to time to pass such amendatory acts as they shall deem right. No person shall be considered as a member of the corporation aforesaid, until he shall actually have received his policy, and paid his premium thereon, except that for organising the corporation, those who do annex their names to the subscription papers herein provided for, shall have power to vote at the first meeting of the society, and until policies are issued to the amount of \$20,000; and until policies to that amount are issued, no policy shall be considered as binding on the company. The commissioners appointed or authorised to be appointed by this act, shall make

Subscription  
papers, to whom  
returned,

return of their subscription papers to Thomas T. Barr, Thomas January and Charles Wilkins, when they shall be called on therefor; and the said Thomas T. Barr, Thomas January and Charles Wilkins shall be authorised to advertise the first meeting of the subscribers, and to call other meetings, until the corporation shall be organised. The by-laws shall regulate the mode of voting, the number of votes which members of the corporation shall be entitled to, in proportion to the amount of their policies, and the manner of voting by proxy.

1810.

First meeting to be advertised.

Mode of voting to be regulated by by-laws.

Sec. 4. *Be it further enacted*, That in fixing on the amount of premium to be paid by the members of the said assurance society, a proper allowance shall be made between houses situated in the country and those in towns, in proportion as they are more or less exposed to the ravages of fire; and a due regard shall be had to the materials of which houses to be insured are built, raising or lowering the premiums as they may be more or less subject to take fire.

Distinction in the rates of insurance, to be regulated by the relative situation of property

Sec. 5. *Be it further enacted*, That nothing in this act contained shall authorise the establishment of a bank; nor shall said society issue any bills of credit, or any thing of the kind; nor shall they do any thing by any ways or means to effect these objects. Their acts shall be confined to the insuring of houses only, as expressed in the act; and no money paid in as premiums, shall be appropriated in any way, except as is contemplated by this act.

Further restrictions.

## CHAPTER CCLXIX.

*An ACT authorising Joseph Love and others to locate and survey Lands for Iron-Works.*

Approved January 31, 1811.

They had discovered an iron bank in Pulaski county, on land belonging to the commonwealth. This act authorised them to locate 2000 acres, including it. The price was 10 dollars per 100 acres, and they had 6 years to pay it in.

## CHAPTER CCLXX.

*An ACT granting certain Lands to John Francis and Richard Slavey, for the benefit of Salt-Works.*

Approved January 31, 1811.

The land lay in Wayne county; they were authorised to locate 1000 acres, to include the salt-spring they had found; the price was 10 dollars per 100 acres, the time of payment three years, and no patent to issue unless they should have manufactured 1000 bushels of salt within the three years.

1810.

## CHAPTER CCLXXI.

*An ACT to amend the act for the appropriation of Lands acquired by the Treaty of Tellico.*

Approved January 31, 1811.

The act here amended is Chap. 171, of this Volume.

*Sec. 1. BE it enacted by the general assembly, That* Directions to each and every person or persons who may hereafter pay persons paying money into the treasury any money, under the provisions of the said recited act, shall first apply to the auditor with a certificate from the register, of the quantity of land about to be paid for, and the auditor shall thereupon certify to the treasurer the amount to be paid thereon, and debit the treasurer for such amount as in other cases.

*Sec. 2. Be it further enacted, That for all monies* Treasurer's duty. paid under the said recited act, prior to the passage of this act, the treasurer shall make a statement on oath, before some justice of the peace for Franklin county, and deliver the same to the auditor, who shall debit the same against the treasurer.

*Sec. 3. Be it further enacted, That the whole amount* Instalments and interest how regulated. of the monies now due and to become due this commonwealth, for any tract of land acquired under and by virtue of the provisions of the said recited act, shall be discharged in four equal annual instalments; the first to be paid on the first day of January next, and on that day in every succeeding year, until the whole shall be paid in the term aforesaid: *Provided however,* that the commonwealth shall be entitled to an interest of six per cent. per annum, on the principal now due for said lands, until the same shall be paid into the public treasury.

*Sec. 4. Be it further enacted, That if any instalment* Respecting sales. hereby allowed on any tract of land acquired as aforesaid, shall not be paid on or before the first day of January next, and on that day annually thereafter, the lands upon which such instalment shall not be paid as aforesaid, shall be exposed to sale under the same laws and regulations which are now in force relative to the sale of head-right lands in this commonwealth.

*Sec. 5. Be it further enacted, That it shall be the du-* Clerks and auditor, their duty. ty of the clerk of the circuit court, where certificates have or may be granted, to transmit the same to the auditor of public accounts, on or before the first day of

November next, and every succeeding November ; and said auditor shall, on or before the 15th day of December ensuing, make out and furnish the register with an account of the claims granted by the respective circuit courts ; and it shall be the duty of the register to proceed to sell all lands subject to sale by the fourth section of this act ; which shall be exposed for sale by the register, at the state-house door, on the second day of January next, and every succeeding second day of January.

1810.

Sec. 6. *Be it further enacted*, That the clerks shall have the same compensation for making out and transmitting to the auditor the respective certificates, granted to the settlers in the tract of country acquired by the treaty of Tellico, which the clerks of the county courts were allowed for transmitting to the auditor the certificates of claims granted to the settlers in this commonwealth by the county courts.

Clerk's compensation.

## CHAPTER CCLXXII.

*An ACT for the relief of Reuben Steivis.*

Approved January 31, 1811.

This act authorized him to be paid out of the treasury for two drums furnished the 8th regiment, in the year 1793.

## CHAPTER CCLXXIII.

*An ACT to amend an act to regulate proceedings in suits at Law and in Chancery.*

Approved January 30, 1811.

The act amended is Chap. 181 of this Volume.

WHEREAS many of the good people of this commonwealth are liable to be injured in suits at common law and chancery, owing to the intricacy of the English practice pursued in courts within this commonwealth : for remedy whereof,

Preamble.

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That in suits at common law, the plaintiff shall state in substance, in his declaration, what he claims of the defendant ; and the defendant shall state in substance, what he intends to rely on in his defence ; and neither of the parties shall be bound to any particular formality in pleading by averment or

Common law suits, how proceeded in.

Pleadings.

1810.

otherwise, provided the parties have stated their cases so plain that a fair trial can be had on the merits of the cause; and whenever more is claimed by either than shall be supported by evidence, so much only as may be thus supported, shall be good: and no fact tried by a jury shall be otherwise re-examined in any court, than according to the rules of the common law.

In chancery.

Sec. 2. *Be it further enacted*, That in chancery causes, a bill and answer, stating the points relied on by each party sufficiently plain to be understood, time being given agreeably to law for proof to be adduced, shall be deemed sufficient to try the cause on the merits, notwithstanding no replication or other plea put in, or steps taken, other than orders of court for any matter proper for bringing in testimony before trial shall be had. Answers may state interrogatories to the complainant, and may make it answer as a cross bill, if he choose so to do; and the court shall not require either of the parties to take any other steps, or put in any other plea, provided the cause can be fairly tried on its merits.

Suits not affected by informality.

Sec. 3. In all cases where any suit has or may be brought, in any court of record within this commonwealth, the same shall not be set aside for informality, if it appears that the process has issued in the name of the commonwealth of Kentucky against the defendant or defendants, for money or property owing or due, or for damages by trespass, or otherwise, as the case may be, and that said process was served on the defendant or defendants, by the proper officer, in due time; but if it shall appear that said process was not served in the time prescribed by law to enable the parties to have a trial, the suit shall be tried at the succeeding term, unless for good cause shewn either party shall have a continuance. Nor shall any plaintiff be nonsuited for any statement in his declaration, provided it substantially contains a good cause of action against the defendant or defendants, and the substance thereof is supported by evidence. Nor shall any demurrer, either general or special, be sustained, when offered by either plaintiff or defendant, to any part of the pleadings, provided the statements contained in said pleadings substantially apprise the adverse party of the point or points intended to be relied on, and amount to a substantial cause of action or defence, as the case may be; but in all cases where

Exceptions.

Substance of the demand sufficient to bar a nonsuit.

Demurrer to pleadings shall not be sustained

Exceptions.

Defective pleadings may be amended.



the court is of opinion that the parties cannot proceed to a fair trial on the merits of the cause, from a defect in the pleadings, either party may be allowed to amend, and if by such amendment the adverse party is taken by surprise, the trial shall at his request be continued to the next term, at the cost of the party in default. And the oath and affirmation to be administered to the jury, shall be in the form following, to wit: "You, and each of you, do swear or affirm (as the case may be) that you will well and truly try the issue joined, between C. D. plaintiff, and E. F. defendant, and a true verdict give, according to evidence, unless dismissed by the court, or withdrawn by the parties." 1810.

Sec. 4. And all courts at common law and chancery, in civil cases, shall grant continuances for good causes shewn, and shall pay due regard to the provisions of this act, any thing to the contrary notwithstanding. Continuances may be granted

#### CHAPTER CCLXXIV.

*An ACT to amend the act altering the mode of taking in Lists of Taxable Property.*

Approved January 30, 1811.

The act amended is Chap. 165 of this Volume.

Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky, That persons not bound to perform military duty, shall not be bound to attend muster for the purpose of giving in lists of their taxable property; but such persons shall, in every year, make out their lists of taxable property, and of persons they are bound to pay taxes for, and make the oath required by law in that respect, before some justice of the peace, and shall transmit it to the commissioner of their districts respectively, or shall give in their lists respectively to the proper commissioner: the person or persons so complying, on or before the first day of August in each year, shall be exempt from the penalties for not attending to give a list of persons and property subject to taxation in that year. Any other person who may have failed to attend muster, for the purpose of giving in his list, may in like manner be exempt from the penalties therefor, by complying with the provisions of the preceding section, by the time therein mentioned. The

*Persons not bound to perform military duty, excused from attending musters to list their property.*

*May send their lists on oath.*

*When.*

*Other persons failing, may send their lists.*

*When.*

1810. commissioners shall have power to make personal application to persons within his district, for their lists of property subject to taxation, at any place within their respective counties. Where any captain's company is or shall be divided by a county line, the county courts respectively shall appoint commissioners in such sections of companies as are within their respective counties. Each county court clerk shall make out three alphabetical books, of all persons and property subject to taxation, returned to him by the commissioners; one of which he shall transmit to the auditor of public accounts by the 10th day of December in each year, one other he shall deliver to the sheriff on request, the third he shall carefully preserve in his office, which shall be open to the inspection of every person, and shall give out copies thereof, or of any part thereof, to any person requiring. If any clerk shall fail to perform any of the duties enjoined upon him by this act, he shall forfeit and pay the sum of two hundred dollars, to be recovered as the other penalties in the act to which this is a supplement.
- Sec. 2. And where from any cause whatever, any commissioner shall fail to proceed to discharge the duties enjoined on him by law, by the first day of August, the county courts shall, at their next court, appoint some other fit person, who shall thereupon proceed to take in the list in his said district, giving at least fifteen days notice in writing, at three of the most public places in his district, of the time and place he will attend for that purpose.
- Sec. 3. That the several clerks shall, within five days after appointment of commissioners, make out two copies of each appointment, and the sheriffs of the respective counties shall, within fifteen days thereafter, apply therefor; and shall, within fifteen days, deliver, *ex officio*, one of said copies to the person so appointed, and shall return the other to the clerk's office, with an endorsement thereon of the time he served the same. And each sheriff or clerk failing to perform the duties hereby enjoined on them, shall be subject to a fine of ten dollars, in addition to the fine now imposed by law.
- Sec. 4. That all fines imposed by this act, or the act to which this is a supplement, shall be recovered by motion before the county court, ten days notice being previously given to the party of such intended motion;
- Commissioners may apply for lists. Provision where a company lies in two counties. Clerk to make out three books. Disposition thereof. To give copies thereof. Penalty on the clerks. How recovered. Court may make a second appointment. Clerks to make out copies of orders of appointment. Duty of sheriff. Penalty on the sheriff's failing to do his duty. How fines recovered.

and all fines collected on any such motion, shall be applied towards lessening the county levy. And it shall be the duty of the several county courts within this commonwealth, to see that this act and the act to which this is a supplement, is put into complete operation, and all delinquencies duly punished.

1810.

How applied.  
Courts to see  
this act carried  
into operation.

Sec. 5. *Be it further enacted*, That it shall be the duty of the commissioners of the tax, for the year 1811, to take an accurate account in his book of every white male inhabitant above the age of twenty-one years, in their several districts, and on every four years thereafter, for the purpose of enabling the legislature to apportion the representation in this commonwealth.

Commissioners  
to note the No.  
of voters.

Sec. 6. The persons performing the duties of a commissioner, shall be exempt from serving on juries, working on roads, from fine for not attending musters, for one year next succeeding the appointment; but shall not be exempt from performing a tour of duty, if drafted or called into actual service.

Commissioners  
exempt from  
certain services.

Sec. 7. Any commissioner failing to perform the duties according to his appointment, without reasonable excuse, shall be fined in any sum not exceeding sixty dollars, to be recovered as directed by the act to which this is an amendment.

Penalty on the  
commissioners  
for a failure of  
duty.

Sec. 8. And whereas many persons have neglected to give in their lists of taxable property to the commissioners for the last year,

*Be it enacted*, That it shall be the duty of all such to supply such omissions, by giving in a list of their taxable property for the last year, at the time they may give in their lists for the present year: and any person failing so to do, shall be subject to the penalties inflicted by law, for failing to give in their lists of taxable property.

How omissions  
of last year may  
be supplied.

Penalty.

Sec. 9. That all persons belonging to volunteer companies or corps, shall give in their lists of property and persons subject to taxation, to the commissioner for that militia captain's company within which they may respectively reside.

With whom  
certain persons  
to list their prop-  
erty.

So much of any act as comes within the purview hereof, is hereby repealed.

1810.

## CHAPTER CCLXXV.

*An ACT concerning Executions.*

Approved January 31, 1811.

*BE it enacted by the general assembly of the commonwealth of Kentucky, That where any obligor, obligors, or either of them; obligee, obligees, or either of them, in any replevin bond taken on execution, or on any bond taken by any lawful officer for sale of land, at three months credit, shall now be dead, or may hereafter die, before satisfaction, execution or executions may be sued out on any such bond, in the name of the surviving obligee or obligees, or against the surviving obligor or obligors, as the case may be, without suing out a writ of scire facias, or other dilatory proceeding.*

## CHAPTER CCLXXVI.

*An ACT to appoint Managers on the Turnpike and Wilderness Road, and for other purposes.*

Approved January 31, 1811.

Preamble.

WHEREAS it is represented to the present general assembly, that the law which passed at the December session, 1807, authorising the governor to appoint directors on the turnpike and wilderness road, ought to be amended, inasmuch as one of the said directors has resigned, and another being absent from the state, has rendered their operations ineffectual; wherefore,

Managers appointed

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky, That Andrew Craig, from the county of Knox; John Burditt, from the county of Rockcastle; and Robert Caldwell, from the county of Madison, be, and they are hereby appointed managers of the turnpike and wilderness road; whose duty it shall be to call on Christopher Durbin, former keeper, and John Reid, present keeper of the turnpike, for a correct statement of all the monies by them received during the time each of them were keeper of said turnpike: and it shall be the duty of the said Durbin and Reid to make such statement on oath before some justice of the peace, in order that the aforesaid managers may be enabled to make a correct settlement with the*

Duty of former &amp; present keeper.

Managers to settle with the present directors.

Sec. 2. *And be it further enacted, That it shall be the duty of Andrew Craig and John Burditt, or their suc-*

cessors, to make a full and complete settlement with 1810.  
 Joseph Welsh, Robert Caldwell and Nathaniel Roches-  
 ter, Esquires, present directors of the turnpike and wil- When.  
 derness road, on or before the first day of May next:  
 and all monies upon such settlement which shall be Money due to  
 found in the hands of either of said directors appertain- be paid the pre-  
 ing to the said institution, shall be immediately paid sent managers.  
 over into the hands of the aforesaid managers.

Sec. 3. *And be it further enacted,* That it shall be the Duty and pow-  
 duty of the said managers, or any two of them concur- ers.  
 ring therein, to appoint, from time to time, a sufficient  
 number of commissioners to work and keep said road  
 in the best possible repair, under the same laws and  
 regulations as are now in force relative to the said turn-  
 pike and wilderness road; but said managers shall  
 be vested with the power of dismissing said commis-  
 sioners and appointing others in their stead for a ne-  
 glect of their duty: and it shall be the duty of the afore-  
 said managers to examine the work which shall be pa-  
 tronized by the said commissioners.

Sec. 4. *Be it further enacted,* That the said managers Their pay.  
 shall have the same power which is now by law given  
 to the directors of said road in performing the duties  
 assigned them, in appropriating the money collected at  
 the said turnpike for the use of said road; and the said  
 managers shall be entitled to one dollar twenty-five cents  
 per day for each day's service which they may render  
 under the directions of this act: *Provided however,* that Proviso.  
 they shall first make oath before some justice of the  
 peace, stating the number of days they shall have been  
 employed in carrying this act into effect; which affida-  
 vit shall annually be forwarded, together with a state-  
 ment of all the monies received by them from the turn-  
 pike and laid out for the repair of said road; a full and  
 complete statement of which shall be transmitted annu-  
 ally, on or before the 25th day of December, to the gover-  
 nor.

Sec. 5. *Be it further enacted,* That it shall be the Managers to en-  
 duty of each of the aforesaid managers before he enters ter into bond &  
 on the duties of his office, to enter into bond in each of security.  
 their respective county courts in the sum of one thousand  
 dollars each, with such security as said county court  
 shall think proper, for the true performance of the du-  
 ties enjoined by this act: which bond shall be made Condition.

1810. payable to the commonwealth; and to be void upon conditions, that the aforesaid managers shall account for all monies received by them from the keeper or keepers of the turnpike, or the directors now in office.

*To take an oath* Sec. 6. *Be it further enacted*, That it shall be the duty of the aforesaid managers before they enter upon the duties of their office to take an oath, before some justice of the peace in their respective counties, that they will faithfully discharge the duties enjoined on them by the before recited act.

*Managers to build or purchase a bridge over Big Laurel river.* Sec. 7. *Be it further enacted*, That it shall and may be lawful for the aforesaid managers, so soon as they can after the passage of this act, either to build a bridge across Big Laurel river on the wilderness road, or purchase one that is built, belonging to Isham Farris, which to them may appear most advantageous for the benefit of the institution and good of the public, and pay the same out of the money arising from said turnpike gate.

*How to be paid for.* Sec. 8. *And be it further enacted*, That if any of the within mentioned managers should resign, die, remove from the county, or refuse to qualify agreeable to the provisions of this act, the county court, wherein he shall have been so appointed, shall proceed to appoint some fit person to fill his place: *Provided however*, that the managers herein named shall have no power to remove or change said wilderness road from the place where it now runs, except for the purpose of making said road on better ground than it was before, and not farther than three hundred yards at any one place, without concurrence of the whole of said managers; and then it shall be given in writing to the commissioners, the place where he shall leave the present road, and where he shall come in again: and the managers herein mentioned shall have full power to call on any or all of the former commissioners, if they shall think proper, for a fair settlement of their accounts; and if there should appear any balance due, from any or either of said former commissioners, or either of the former gate keepers, in favor of the commonwealth, they shall appropriate the same to the use of said road.

*County court to appoint managers in certain cases.* Sec. 9. *Be it further enacted*, That the said managers are hereby authorised to sue in the name of the commonwealth, any person or persons who shall fail to pay over to

*Managers may bring suit.*

## XIX. YEAR OF THE COMMONWEALTH.

267

them all money or monies which may be in their hands, collected from the turnpike aforesaid.

1810.

Sec. 10. *And be it further enacted*, That it shall and may be lawful for the keeper of the turnpike to administer an oath to any person claiming the benefit of the law exempting the citizens of Knox county from paying toll at said turnpike.

Keeper of turnpike may administer oath.

Sec. 11. *And be it further enacted*, That the keeper of the turnpike be allowed fifty dollars in addition to his present salary.

Keeper's salary.

So much of every act as contains provisions contrary to this act, shall be, and is hereby repealed.

### CHAPTER CCLXXVII.

*An ACT to amend the laws now in force directing the mode of summoning and empannelling Grand Juries.*

Approved January 31, 1811.

It is believed that no law of this state requires a grand juror to be *de jure* a citizen of the commonwealth. This defect in the laws of Virginia was remedied by an act passed in 1793—See Rev. Code, page 325.

*BE it enacted by the general assembly of the commonwealth of Kentucky*, That where the grand jury which may be summoned to attend any of the circuit courts in this commonwealth shall be discharged, and the said court at any time thereafter during their said term shall think it necessary to have empannelled another grand jury, they shall have power and authority to do so: and for that purpose shall enter an order on record directing the sheriff to summon a sufficient number of qualified persons to constitute a grand jury, to meet and attend at such time as the court shall direct: upon which said order, the sheriff shall proceed immediately to summon a grand jury, to meet at the time directed by said order of court; which said grand jury so summoned, being duly empannelled, shall have all the powers, and be subject and governed by the same rules, regulations and laws, as grand juries heretofore have been; and their proceedings shall be as effectual and binding, to all intents and purposes, as though done by a grand jury summoned under the laws now in force.

Court's power to have a grand jury summoned during term.

To order the sheriff to summon jury.

Sheriff's duty.

Powers of grand jury.

Validity of their proceedings.

1810.

## CHAPTER CCLXXVIII.

*An ACT increasing the power of the County Court of Fayette in laying their Levy.*

Approved January 31, 1811.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky,* That it may be lawful for the county court of Fayette, if two thirds of all the justices in said county shall deem it expedient and concur therein, at their March or April terms next, and at the laying the county levy in each year thereafter, to lay a levy of two dollars upon each and every dog above two, kept or permitted to be kept upon any farm or plantation, or above one, kept or permitted to be kept about any house or lot in any town in said county, to be paid by the owners or occupiers of such farm, plantation, house or lot, and to be collected, accounted for and disposed of, in like manner as other county levies now are.

Power of the county court to lay levy on dogs

*Sec. 2. Be it further enacted,* That it shall be the duty of the owner or occupier of any such farm, plantation, house or lot, about, or on which, any dog or dogs kept, or permitted to be kept, above the number before recited, to deliver a list of all such dog or dogs above the number permitted to be kept to the commissioners for taking in taxable property, at the same time, under the same regulations and penalties, as other taxable property is listed in this commonwealth.

How collected and accounted for.

Owners of dogs to deliver in list of all dogs above two, to commissioners of the tax.

*Sec. 3. Be it further enacted,* That it shall be the duty of the commissioners for taking lists of taxable property in the county aforesaid, to return a list of all such dogs at the time, and under the same regulations as other taxable property is returned; and it shall be the duty of the clerk to have, in such copies of the books as are made out for the use of the county, distinct columns, in which shall be listed, opposite the names of the owners, the number of dogs returned by each person under this act.

Penalty for failing.

Duty of commissioner.

Duty of clerk.

*Sec. 4. Be it further enacted,* That every tanner and butcher in said county may be permitted to own any number of dogs not exceeding four, and shall not be liable to the tax imposed by this act upon said number four.

Tanners & butchers allowed to keep 4 dogs.

## CHAPTER CCLXXIX.

*An ACT to amend the Militia Laws.*

Approved January 31, 1811.

Repealed—See Chap. 297, of this Volume.



## CHAPTER CCLXXX.

1810.

An ACT to amend the law respecting Executors, Administrators and Heirs.

Approved January 31, 1811.

Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky, That hereafter no executor or executors, administrator or administrators, shall be made liable for more than the amount of assets which have come or may come into his, her or their hands, to be administered, or on account of having failed to plead or make defence, or on account of any plea or pleas, which he, she or they have heretofore, or may hereafter plead, to any suit or action whatever, determined, brought or to be brought or prosecuted against him, her or them; or either of them; but the judgment of the court in all such cases shall only render such executor or executors, administrator or administrators, liable for the amount of assets in his, her or their hands unadministered. And in all suits against such executor or executors, administrator or administrators, on their bonds or otherwise, for *devastavit*, he, she or they shall be at liberty to plead *plene administravit*; and under such plea shall be at liberty to shew the real amount of assets which were in his, her or their hands, unadministered, when the original judgment was rendered against him, her or them; for which suit judgment may be rendered; and for no more: *Provided however*, that if any executor or administrator shall suffer judgment to go against them by default, or shall fail or neglect to shew the real amount of assets in their hands, unadministered, by which judgment shall pass against them for more than the amount of such assets, and shall afterwards, when sued for a *devastavit*, on his, her or their bond, or otherwise, shew that they have not assets sufficient to pay the plaintiff's demand, it shall and may be lawful for the court to adjudge the costs of such second suit, to be paid by such defendant or defendants, out of his, her or their own proper goods and chattels.

Ex'rs or adm'rs only liable for the amount of assets.

Same, and costs upon a second suit.

Sec. 2. And be it further enacted, That no suit shall hereafter be brought, nor any *scire facias* sued out against any executor or executors, administrator or administrators, until six months after he, she or they have qualified according to law; and if any suit shall be

Suits not to be instituted vs. ex'rs or adm'rs until six months after qualification.

1810. brought, or any *scire facias* sued out hereafter, contrary to the provisions of this act, it shall be the duty of the court in which such suit is depending, or to which such *scire facias* shall be returned, to dismiss the same on motion, without notice: *Provided however*, that nothing herein contained shall be so construed as to exempt any executor *de son tort*, from being sued immediately.

Suits brought contrary hereto to be dismissed.

Ex'rs *de son tort* excepted.

Ex'rs or adm'rs not to confess judgment in a given time.

Sec. 3. *And be it further enacted*, That no executor or administrator shall be permitted, within such term of six months, after he, she or they may have qualified as such, to confess any judgment or judgments, so as to give to any claim or claims a superior dignity to any other claim or claims, against the estate of their testator or intestate.

Sec. 4. *And be it further enacted*, That the heir or heirs of a deceased person shall be entitled to receive the benefit of all and every of the provisions aforesaid, relating to executors and administrators, as far as the same are applicable.

Provisions of the act extended to heirs.

#### CHAPTER CCLXXXI.

*An ACT allowing an additional number of Justices of the Peace in certain Counties in this Commonwealth.*

Approved January 31, 1811.

Sec. 1. *BE it enacted by the general assembly*, That the counties hereinafter named shall be entitled to the following number of justices of the peace, in addition to the number heretofore allowed by law: The county of Jessamine, one; Muhlenburg, two; Woodford, one; Cumberland, one; Logan, two; Hardin, one; Warren, four; Shelby, two; Caldwell, one; Clay, one; Jefferson, four, two of whom shall reside in the town of Louisville; the county of Butler, two; Green, one; Breckenridge, two; Ohio, two; Bullitt, one; Harrison, one; Clarke, one; Nelson, one.

Sec. 2. *And be it further enacted*, That the county of Union be entitled to ten justices of the peace, and the county of Bath eleven justices of the peace, being the number for each county now necessary.

## CHAPTER CCLXXXII.

1810.

*An ACT to amend the laws in force in this Commonwealth authorising proceedings by distress for Rent.*

Approved January 31, 1811.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That when any landlord shall wish to distrain on his tenant, or on any person claiming and occupying under him, he shall not be permitted to issue his own warrant, but shall go before some justice of the peace for the county in which the land lies, and shall make oath to the amount of rent due him and in arrear, from the person on whom he intends to make distress. Whereupon it shall be lawful for the justice to issue his warrant of distress in favor of the said landlord, and shall be directed to the sheriff, or some constable of the county in which the land lies: by virtue of which warrant the said sheriff or constable shall be authorised and is hereby required to distrain on the goods, chattels and slaves of the said tenant, or of any under-tenant, claiming and occupying said land, either directly or indirectly, under said tenant, for the amount due such landlord, and such other sum as will be sufficient to cover all legal costs, interest and charges: *Provided* however, that if the tenant has removed himself and property out of the county where the land lies, then and in that case the said warrant of distress may be directed to and executed by any sheriff or constable of the county to which such tenant has removed his or her property.

Landlords restrained from issuing their own warrants.

To be issued by a justice of the peace.

To whom directed.

On what to be levied.

Provision where tenant has removed.

Sec. 2. *Be it further enacted,* That no property shall hereafter be liable to be distrained for rent, unless the same shall belong to the person or persons against whom the distress warrant issued, or to some sub-tenant on the land leased or rented.

Whose property liable to distress.

Sec. 3. *And be it further enacted,* That when any person or persons shall hereafter sue out or prosecute any writ of replevin, he, she or they suing out such writ, and his, her or their security or securities, shall only be liable for the amount of rent found to be due, and ten per centum thereon, together with costs; and the court shall render judgment against such plaintiff or plaintiffs in replevin, and his, her or their security or securities accordingly.

Penalty upon failure in action of replevin.

Sec. 4. *And be it further enacted,* That distress for rent shall not hereafter be made, unless the said rent is

Rent reserved in money only can be distrained for.

1810.

Exception as  
to property in  
towns.

reserved and payable in money ; nor shall the landlord have any exclusive lien on the property of his tenant or under-tenant, except the same is the produce of the farm or place rented or leased : *Provided however*, that when any house or houses, within the bounds of any town in this commonwealth, is rented or leased, the landlord shall have a lien as heretofore, on the household furniture of the occupying tenant.

Sale to be ad-  
vertised.

Sec. 5. *And be it further enacted*, That when any distress is made for rent in arrear, the officer making the same, previous to his making sale of the goods, chattels or negroes so distrained, shall advertise at two or more of the most notorious and public places in the neighborhood, the time and place of making such sale, at least fifteen days previous thereto.

Distress may be  
replevied.

Sec. 6. *And be it further enacted*, That any person or persons whose property is seized by virtue of a distress warrant, shall be allowed at any time previous to the sale thereof, to replevy the claim for three months, by giving sufficient security, to be approved of by the officer who shall have executed the warrant ; whereupon the property so taken shall be restored : and it shall be the duty of the officer taking such bond to return the same within sixty days to the clerk's office of the circuit court of the county in which such distress was made, together with the warrant of distress ; on which bond the clerk of such court shall, when due, unless the money be paid, issue an execution as on other replevy bonds, with an endorsement thereon that " No security of any kind is to be taken ;" and the sheriff shall proceed to collect the amount of such execution as in other cases.

Bond to be re-  
turned.

Proceedings  
thereon.

Repealing  
clause.

Sec. 7. *And be it further enacted*, That all acts or parts of acts coming within the purview of this act, shall be and the same are hereby repealed.

#### CHAPTER CCLXXXIII.

*An ACT allowing the Citizens of Springfield further time to elect their Trustees.*

Approved January 31, 1811.

They were allowed two months from the passage of this act.

## CHAPTER CCLXXXIV.

1810.

*An ACT to incorporate the Shareholders of the Washington Library Company, in the town of Washington in Mason county.*

Approved January 31, 1811.

Sec. 1. *BE it enacted by the general assembly of the Commonwealth of Kentucky,* That Basil Duke, Robert Taylor, Francis Taylor, Mann Butler and Adam Beatty, and the rest of the subscribers who have or may hereafter subscribe to the Washington library company, shall be a body politic and incorporate, by the name and style of "The Washington Library Company;" and by that name shall have power to sue and be sued, plead and be impleaded, and to have and make use of a common seal.

Sec. 2. That the shareholders of the Washington library company shall meet at such place in the town of Washington, on the first Saturday in January, 1812, and on the first Saturday in January every year thereafter, as they, or the directors thereof, may appoint, for the purpose of chusing five directors from among their number, who shall continue in office one year, and until their successors shall have been duly appointed and qualified: the directors so appointed shall take an oath, or affirmation, faithfully and impartially to discharge their duties according to the constitution and laws of the institution.

Sec. 3. The directors so elected shall chuse from among themselves a chairman, and shall at all times hold, possess and exercise all the authority vested in them by this act, or the articles of the association, and such laws and regulations as shall be made in pursuance thereof; they shall have power to fill all vacancies which may happen, either in their own body, or in any other office of the association, whether occasioned by death, resignation or otherwise; but all officers thus appointed, shall hold their offices only until the next general meeting: and they shall also have power to call general meetings of the shareholders when they may deem necessary.

Sec. 4. The directors shall have power to make by-laws and rules for the government of the company, inconsistent with this act or the articles of association; to procure such books for the use of the library as in their judgment will best promote the objects of the institution; and in general to superintend the affairs of the

1810. company: but all by-laws and rules adopted by the directors, shall be liable to be repealed, amended, or new ones enacted, at any general meeting of the shareholders.

Three directors  
to form a quo-  
rum.

No books to be  
ordered unless a  
majority of all  
directors concur

Sec. 5. Three directors shall form a quorum to do business; but no books shall be ordered for the use of the library without an order for that purpose previously made and concurred in by a majority of the whole of the directors, and entered of record among the proceedings of the association.

At general mee-  
tings what No.  
of shareholders  
to form a quo-  
rum.

Sec. 6. At every general meeting, fifteen shareholders shall constitute a quorum to do business; they shall have power to provide by law for the removal of secretaries, treasurers and librarians, for misconduct in office.

Secretary, &c.  
to take an oath,  
give bond, &c.

Sec. 7. The secretary, treasurer and librarian, shall take an oath, or affirmation, impartially to perform the duties of their respective offices; and bond and security may be required of the treasurer and librarian, conditioned for the faithful discharge of the duties assigned them.

Powers of the  
shareholders.

Sec. 8. The shareholders shall have full power to recover all and every sum of money now due under the articles of subscription to the said library, or which may hereafter become due to the said corporation, in the same manner as debts of the like amount are recoverable.

No. of shares,  
and how trans-  
ferable.

Sec. 9. There shall not be more than five hundred shares in the said corporation. The shares shall be transferable in such manner, and under such rules and regulations, as are, or shall be, prescribed by said association: and all estates, rights, properties, privileges, debts and funds of every kind, now belonging to said library association, shall be vested in, and belong to said corporation.

Amount of pro-  
perty limited.

Sec. 10. The said corporation shall, and may lawfully possess property, whether real or personal, to any amount not exceeding four thousand dollars, exclusive of its books, maps and drawings.

Concerning for-  
feitures.

Sec. 11. There shall be no forfeitures to a greater amount than the value of the share or shares of the delinquent. And the corporation shall have power to make such rules respecting the transfer and forfeiture of shares as may be deemed expedient.

Sec. 12. Any shareholder may at any time withdraw from the corporation, by entering on the records of said incorporation a relinquishment of his share or shares, and discharging all claims which the said incorporation may have on him under the original articles of association, or any by-laws made in pursuance thereof, and of this act: and until such relinquishment is made, every shareholder and his legal representatives shall be responsible for the amount of all debts, fines or contributions, arising under the by-laws or regulations of said association.

1810.

Shareholders  
may withdraw,  
and how.

Sec. 13. The articles of association and by-laws, made before the act of incorporation, shall be considered as valid and binding on the members thereof until the same shall be repealed or altered, which the said association shall have power to do.

Articles of asso-  
ciation binding.

Sec. 14. Fifteen or more shareholders, who shall meet at the stated annual meeting, shall have power to proceed to the election of directors and other officers; and a majority of the shares represented at such meeting, and concurring in such election, shall decide the same. The said corporation shall have power to fix and regulate the fines, forfeitures, penalties and contributions to be paid, and the manner of collecting them.

Directors elect-  
ed, and how.

Sec. 15. No shareholder shall be entitled to vote in any of the proceedings of the incorporation until he shall have received a written evidence, under the seal of the corporation, of the share or shares to which he is entitled.

Respecting  
votes.

Sec. 16. The secretary shall keep a record of all orders, resolutions and proceedings of said incorporation; which shall be received as evidence, both for and against the corporation, in any matter of controversy in which the corporation may be concerned: he shall also keep a record, or memorial, of all evidences of shares issued to shareholders; which record, or a certified copy thereof, under the seal of the corporation, shall be evidence in any matter of controversy wherein such shareholders or the corporation may be concerned.

Duty of secre-  
tary.

Sec. 17. The directors chosen by the association before the passage of this act, shall have full power and authority to act as such until the general meeting in January, 1812, and until their successors shall have been elected and qualified.

Authority of di-  
rectors appoint-  
ed by this act.

1810.

## CHAPTER CCLXXXV.

*An ACT for the better regulation and preservation of the Buildings on the Public Square in Frankfort.*

Approved January 31, 1811.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That the keeper of the state-house shall have power and authority, by and with the advice and consent of the governor, to cause such repairs to be made, from time to time, to the buildings erected at the cost of the commonwealth on the public square in the town of Frankfort, as may be necessary for their preservation: and upon a statement of the items of such repairs, and their value, approved and countersigned by the governor, the auditor of public accounts may issue a warrant for the amount on the treasury, in favor of the person or persons who shall have performed the services.

Sec. 2. *Be it further enacted,* That every person or persons who shall commit any trespass on the said buildings, by defacing or demolishing any part thereof, or of the enclosure of said public square, or shall commit any other wilful and unlawful act on the premises, shall be subject to a fine not exceeding fifteen dollars, to be recovered by warrant, in the name of the commonwealth of Kentucky, at the instance of the said keeper, before any justice of the peace, to be applied by said keeper towards keeping the said buildings and appurtenances in repair: *Provided always,* that nothing in this act contained shall bar or prevent the suing or exhibiting any suit, action or indictment, for any aggravated trespass or injury to the said buildings or the appurtenances, exceeding the value of said fine as above limited.

## CHAPTER CCLXXXVI.

*An ACT for the relief of John Wilkinson and the Sheriff of Campbell County.*

Approved January 31, 1811.

Wilkinson had been sheriff of Madison county; the relief granted both related to revenue matters, and is interesting to them only.



## CHAPTER CCLXXXVII.

1810.

*An ACT relative to Sheriffs.*

Approved January 31, 1811.

Sec. 1. *BE it enacted by the general assembly*, That all motions given by the statutes of this commonwealth, against sheriffs or other officers, for failing to return executions, or for failing to pay over monies collected upon executions, may be had, sued and prosecuted (in cases hereafter arising) at any time within two years after the return day expressed in such writs respectively, and not after, counting the said limitation from the said return day to the delivery or other lawful service of notice of the intended motion: *Provided however*, that if judgment be given for the plaintiff in any such motion, and the same shall be afterwards arrested or reversed, or if the said motion shall be overruled for any informality, or shall be quashed, superseded, dismissed or reversed for any cause, other than a decision upon the substantial merits of the demand in chief, the plaintiff shall be allowed to commence and prosecute the said cause of complaint, by motion, at any time within one year after such overruling, dismissal, arrest or reversal.

Motions against  
sheriffs for fail-  
ing to return  
executions or  
pay over money  
limited to two  
years.

*Provido.*

Sec. 2. *Be it further enacted*, That if any sheriff, or other officer, shall, without good cause, fail, neglect or refuse to return according to the command thereof, any execution which shall have come to hand and to him directed, for the space of one month after the return day thereof, he or they so failing or refusing, shall be liable to the party aggrieved thereby, for principal, interest and costs expressed in such writ of execution, together with thirty per centum damage on the whole amount thereof, to be recovered by motion in like manner and under limitations and provisoes prescribed and provided in cases of failure to pay over monies collected upon execution.

Penalty on she-  
riff failing to  
return execu-  
tions.

How recovered.

Sec. 3. *Be it further enacted*, That it shall be the duty of the clerk to endorse every execution issued upon judgments recovered under the foregoing sections of this act, that "no security of any kind is to be taken."

Endorsement on  
certain execu-  
tions.

Sec. 4. *Be it further enacted*, That no sheriff or other officer shall be compelled or required to go out of his proper county or bailiwick, to render his return of any writ of execution or other process to him directed in

Sheriff need not  
go out of his  
county to return  
process.

1810. civil cases: *Provided however*, that the sheriff or other officer shall enclose such process, with his return thereon, (keeping a copy thereof) directed to the plaintiff or his attorney, and send the same by mail, or other safe conveyance from counties in which no post-office is established, to the county wherein the court is holden whence such process issued.
- How the same may be sent. Sec. 5. *Be it further enacted*, That it shall be the duty of every circuit court, and of the general court and court of appeals respectively, to appoint, by a rule of court, some day in each month as general return days of executions.
- Courts to appoint monthly return days. Sec. 6. *Be it further enacted*, That the several motions in this act alluded to and permitted, may be had, sued, commenced and prosecuted under the limitations and provisos aforesaid, against sheriffs, deputy sheriffs, constables, coroners, the sergeant of the court of appeals, and every other officer to whom any writ of execution may be directed by authority of law, and their deputies, and the securities of principal or deputy respectively, their heirs, executors or administrators.
- To whom the provisions of the act to apply. Sec. 7. *Be it further enacted*, That all sales of land to be made by virtue of any execution, and which by law are required to be made on the premises, shall be made on some notorious and public part thereof: and no sale of real estate, by virtue of any execution, shall be commenced sooner in the day than eleven o'clock A. M. nor later than three o'clock P. M. And all sales by colour of any execution, had or made by covin, fraud or collusion, between plaintiff and sheriff, or other officer acting under such execution; or between defendant and such officer; or between any purchaser or any such officer, or in any wise contrary to the provisions hereof, may be set aside by motion to the court having proper jurisdiction thereof, to be commenced within one year, by any person or party aggrieved thereby, by serving a notice of the intended motion on the proper parties thereto: which notice, if served in term time of the court having jurisdiction thereof, may be returned during the same term, or to the term next succeeding such service: *Provided*, that the court may for good cause grant continuances of said motion, from term to term, or from one day of a term to another day of the same term.
- Where sales of land to be made. When sales to commence. Covinous sales may be set aside by motion. When tried. Provifo. Clerk to note when execution returned. Sec. 8. *Be it further enacted*, That it shall be the duty of the clerk of the court from whence any execution

may issue, to note in his execution book the time when the same is returned to his office ; which shall be evidence on motion or suit against any sheriff for any failure to perform the duties prescribed by this act.

1810.

Sec. 9. *And be it further enacted,* That all motions now allowed by law against sheriffs, for officers' fees put into their hands for collection, may be sued and prosecuted as heretofore, at any time within two years after the time at which he is bound by law to account for such fees.

Motion for fees limited.

## CHAPTER CCLXXXVIII.

*An ACT authorising a Lottery to improve the Limestone Road from Maysville to the south end of Washington, in Mason County.*

Approved January 31, 1811.

Sec. 1. *BE it enacted by the general assembly,* That it shall and may be lawful for Francis Taylor, Adam Beatty, John Chambers, James Chambers, James Morris, Vincent Cleney and John Brown, or a majority of them, to raise by lottery, in one or more classes, as to them may appear necessary, any sum not exceeding five thousand dollars, to be applied to the purposes hereafter mentioned ; and the said Francis Taylor, Adam Beatty, John Chambers, James Chambers, James Morris, Vincent Cleney and John Brown are hereby bound to pay to the fortunate persons the amount that each person shall be justly entitled to by the event of said lottery ; and in case of failure shall be liable to the action of the party aggrieved, or so many of them as were concerned in carrying the said lottery into effect. The drawing of said lottery shall be done at the town of Washington, in the county of Mason, and shall not commence unless two of the justices of the peace in said county are present, whose duty it shall be to see that the same is fairly and properly conducted ; and each of the drawers, examiners and clerks, and all others concerned in drawing said lottery, shall, before the same commences, take an oath to act fairly and impartially in the discharge of their several offices, which any justice of the peace in said county may administer. If the said lottery is not drawn within two years from the passage of this act, it shall be lawful for the purchasers of tickets to demand and receive the money they have respectively paid, from the persons receiving the same.

Managers appointed.

Their duty:

Where lottery to be drawn.

Justices of the peace, their duty.

How money refunded.

1810. *Sec. 2. Be it further enacted,* That the profits resulting from the said lottery shall be applied by the said managers to the improvement of the road leading from Limestone, in Mason county, through the town of Washington, as followeth, to wit: One half of the profits of said lottery to be applied exclusively to the improvement of that part of the road which lies between Maysville and the top of Limestone hill, as to the said managers shall seem best: and the other half of the said profits to be applied to the improvement of such part of the said road from the top of Limestone hill to the south end of the town of Washington, and in such manner as to the said managers, or a majority, shall seem most expedient.

*Sec. 3. And be it further enacted,* That the said managers shall hold their first meeting at the house of Baldwin B. Stith, in the town of Washington, on the third Monday in March next, and whenever thereafter they deem expedient.

#### CHAPTER CCLXXXIX.

*An ACT concerning the Lexington Library Company.*

Approved January 31, 1811.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky,* That the directors of the Lexington library company, or their successors, may raise by lottery, in one or more classes, as to them may seem best, any sum of money not exceeding three thousand dollars; and that they and their successors shall be liable to the fortunate persons for any sum of money they may be entitled to in drawing the said lottery.

*Sec. 2. Be it further enacted,* That if the said lottery is not drawn within three years, the persons purchasing tickets may recover the amount paid therefor.

#### CHAPTER CCXC.

*An ACT supplementary to an act entitled "an act to revive the laws allowing longer time for receiving Platts and Certificates into the Register's Office," approved January 25, 1811.*

Approved January 31, 1811.

The act to which this is a supplement, is Chap. 240, of this Volume.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky,* That nothing in the third

section of the before recited act, shall be construed to legalise or give validity to any military or Virginia land-office treasury warrant claim, which has been entered, surveyed or patented south of Green river, or in the tract of country acquired by the treaty of Tellico.

1810.

Sec. 2. *Be it further enacted*, That nothing in this act shall be construed to prevent any persons from returning platts and certificates to the register's office, agreeably to the provisions of the first, second and third sections of the before recited act.

#### CHAPTER CCXCI.

*An ACT for the relief of certain Clerks and Surveyors in this Commonwealth.*

Approved January 31, 1811

The act here referred to is Chap. 127, of this Volume.

WHEREAS an act passed at the last session of the general assembly of this commonwealth, entitled "an act concerning the bonds of certain officers, guardians, administrators and executors," approved January 23d 1810; by which said recited act, the several clerks or surveyors in this commonwealth were bound to enter into bond, according to the provisions in the before recited act contained, some time in the year 1810; which bonds were directed by said act to be transmitted by said clerks to the clerk of the court of appeals in the year aforesaid: and whereas it is represented to the present general assembly, that many of the clerks in this commonwealth have entered into bond according to the provisions of the before recited act, but unintentionally have neglected and failed to transmit the same to the clerk of the court of appeals, within the time limited by said act: for remedy whereof,

Sec. 1. *Be it enacted by the general assembly*, That where any clerk or surveyor hath entered into bond, according to the provisions in the before recited act, and hath failed to transmit the same to the clerk of the court of appeals within the time aforesaid, that in every such case such clerk or surveyor be allowed the further time of six months from the end of this present session of assembly, to return said bond to the clerk of the court of appeals.

1810.

Sec. 2. *Be it further enacted*, That where any clerk or surveyor hath failed to enter into bond and security by the said recited act required, or if having given bond, the same hath been lost or mislaid, the further time of six months from the passage of this act, be allowed them to enter into bond and security, as by the said recited act is required, and return them to the proper office.

## CHAPTER CCXCII.

*An ACT for the appropriation of Money.*

Approved January 31, 1812.

This is the ordinary appropriation bill.

## CHAPTER CCXCIII.

*An ACT for the benefit of John Weagle.*

Approved January 31, 1811.

He was a tanner, and this act authorised him to locate 200 acres of land in Madison county, for the sake of bark, price 20 dollars per 100 acres, time of payment two years.

## CHAPTER CCXCIV.

*An ACT authorising a Lottery for building a Bridge over the South Fork of Licking, in Harrison County.*

Approved January 31, 1811.

## CHAPTER CCXCV.

*An ACT authorising a sale of the Real Estate of John W. Walker, deceased.*

Approved January 31, 1811.

The sale was to be made for the benefit of his creditors and the support of his infant children, under a decree of the Madison circuit court, on the petition of his executors.

## CHAPTER CCXCVI.

*An ACT better to regulate proceedings in Caveats.*

Approved January 31, 1811.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That from and after the passage of this act, no grant shall issue to the plaintiff in any caveat, entered or to be entered, or to any other

Grants not to  
issue pending a  
caveat.

person in trust for the plaintiff, or to his use, either upon the entry, location or survey upon which such caveat may be bottomed, or upon any other claim, so as to include the land, or any part thereof, within the survey, against which such caveat is or may be entered, until such caveat shall be dismissed, decided or determined; and any grant which shall issue contrary to the direction and intent of this section, shall, to the extent of such interference, be taken and held as fraudulent.

1810.

Sec. 2. *And be it further enacted*, That where the plaintiff in any caveat, entered or to be entered, shall be nonsuit, or shall enter a dismissal or retraxit, or shall have judgment against him for any cause whatever, in such caveat, he shall not be permitted to enter a second caveat against the issuing of a grant upon the survey so first caveated, founded upon the same claim asserted in his first caveat, or upon any other claim whatever, or in any manner by himself or another in trust for him, or secretly to his use, to stay the grant from issuing upon the survey so as aforesaid caveated: and any and every contrivance, shift or device, had or contrived, to evade the provisions hereof, shall render null and void any elder grant or grants, had or obtained by such shift, contrivance or device.

A second caveat at shall not be entered.

Sec. 3. *And be it further enacted*, That in every caveat to be entered, where an appearance for the defendant shall be entered, or the summons shall be returned executed, the plaintiff shall, before or during the term next succeeding such return, or appearance entered, on pain of having his caveat dismissed, file a written statement of the facts on which he intends to rely; and the defendant shall, within sixty days thereafter, file a written statement of the facts on which he intends to rely: *Provided however*, the court for good cause shewn may allow either party a farther day for filing his statement, or for making additional statements.

Manner of conducting preparation and trial of caveats.

Sec. 4. Either party, after filing his statement, may proceed to take depositions before any justice of the peace in this commonwealth, to be used as evidence in the said caveat, the adverse party having been served with reasonable notice of the time and place of taking such deposition or depositions.

When depositions may be taken.

Sec. 5. After the time prescribed or allowed to each party for filing his statement has expired, one whole va-

Time allowed for taking depositions.

1811. { cation shall be allowed for taking depositions and filing exhibits; and the cause shall stand for trial at the court terminating such vacation; at such term the court shall try the caveat upon the statements, depositions, exhibits and facts agreed, as in suits in equity: *Provided however*, that for good cause shewn, the court may rule the cause for trial at a farther time.

When to be  
tried.

Parties may ap-  
peal.

Sec. 6. That in all caveats now depending or hereafter to be commenced, either party may appeal from the decision of the court, or may prosecute a writ of error, within three years from and after such decision, but at no time thereafter; saving however to all persons claiming by virtue of any military or treasury warrant, being infants, *femes covert*, of unsound mind, or residing out of this commonwealth; being also citizens of the United States; to infants, *femes covert*, and persons of unsound mind, residing in this commonwealth; but to none other, the right within three years, after they shall respectively come into this commonwealth, or their respective disabilities are removed, to prosecute a writ of error.

All acts or parts of acts, contrary to the provisions hereof, shall be and the same are hereby repealed.

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## DECEMBER SESSION, 1811.

### CHAPTER CCXCVII.

#### *An ACT to revise and amend the Militia Law.*

Approved January 29, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the following rules and regulations for the government of the militia of this state, be hereafter observed and followed by all persons whatever; hereby repealing every former law, rule and regulation, heretofore enacted or adopted by the authorities of this state relative thereto. The judges of the superior and circuit courts, the treasurer, auditor, attorney-general, secretary of state, register of the land-



office, and their clerks ; professors and tutors of public seminaries of learning ; the public printer, and such as may be necessarily employed in his office ; ministers of religious societies ; keepers of public jails ; the guards employed in the jail and penitentiary house ; the president, cashier and clerks in the bank of Kentucky and its branches, shall be exempt from performing militia duty.

1811.

Sec. 2. The enrolled militia shall be laid off into divisions, brigades, regiments, battalions and companies. The divisions, brigades and regiments shall be laid off by the governor for the time being, and be subject to such change as he may deem expedient. The field officers of the respective regiments are hereby authorised to form, alter or modify the boundaries of battalions and companies, within their said regiments, as they, or a majority of them, shall deem most proper ; and the adjutants shall keep a record thereof. The freemen of this commonwealth (negroes, mulattoes and Indians excepted) shall be armed and disciplined for its defence. Those who conscientiously scruple to bear arms, shall not be compelled to do so ; but shall pay an equivalent for personal service ; which equivalent shall be one dollar per day for each muster. But in cases of invasion, insurrection or war, where such persons are called into service, they shall be permitted to find an able-bodied substitute, in lieu of personal service.

The commanding officers of divisions shall appoint their aids ; brigadier generals, their brigade majors ; commanding officers of regiments, their regimental staff ; and captains of companies, their non-commissioned officers. A majority of the field officers and captains in each regiment shall nominate the commissioned officers in each company ; who shall be commissioned by the governor : *Provided*, that no nomination shall be made unless two at least of the field officers are present ; and when two or more persons have an equal and the highest number of votes, the field officer present who may be the highest in commission, shall decide the nomination.

Sec. 3. The governor shall provide for raising companies of grenadiers, light infantry, cavalry, riflemen and artillery, agreeably to the laws of the United States, at his discretion ; and when raised and officered, shall be subject to the laws and rules of the said United States, and of this state, as other militia.

1811.

## DUTY OF THE MAJOR GENERAL.

Sec. 4. It shall be the duty of each major general to receive from the adjutant general copies of requisitions of men made by the government upon his division, and to attend the several regimental musters in the bounds of his division, once in every two years at least. Whenever the major general may choose, he may attend at any muster or review whatsoever, and give any orders for the disciplining of the troops that he may deem expedient.

## BRIGADIER GENERAL.

Sec. 5. It shall be the duty of the brigadier general to appoint the time of regimental and battalion musters in each year; written notices of which he shall give to the commandants of regiments, on or before the first day of February in each year. It shall be his duty to visit each regiment in his brigade annually, on their regimental muster days, and review them; and whenever he may be present at any muster in his brigade, he may order and direct the discipline and exercise thereof, if the occasion in his opinion should require it. He shall also furnish his major general with a list of the days appointed by him for regimental reviews.

## COMMANDANTS OF REGIMENTS.

Sec. 6. The commandant of each regiment shall receive the written orders of his general of brigade, for the times of holding regimental and battalion musters for the year; and shall give like notice thereof to the commandants of battalions, on or before the 15th day of February in every year; to which he shall add the place for holding his regimental muster and court of assessment. It shall be his duty to attend the regimental and battalion musters, and exercise his regiment himself; to superintend and correct the exercise of the battalion musters, and the company musters, when he may choose to do so. Whenever vacancies in his regiment shall render it necessary, he shall convene the field officers and captains of his regiment, to nominate proper persons to fill vacancies therein.

Sec. 7. It shall be the duty of the major general, brigadier general, or commandants of regiments, upon receiving notice of an invasion or insurrection, to immediately embody such force as they may deem compe-

tent for the emergency, and give the earliest notice thereof to their next superior officer and the governor. 1811.

## COMMANDANTS OF BATTALIONS.

Sec. 8. It shall be the duty of the commandants of battalions to receive the written orders of the commandants of regiments, for the days on which the regimental and battalion musters shall be appointed for the year, and give a written notice thereof to the commandants of companies within their respective battalions, on or before the first day of March in every year; adding thereto the places of holding the regimental and battalion musters, and court of assessment. They shall exercise their battalions on their days of muster; and when they may be present at any company muster, they may superintend their exercise, if they think proper.

## CAPTAINS, OR COMMANDANTS OF COMPANIES.

Sec. 9. The commanding officers of companies shall receive from the commandants of battalions, the written notices of the days and places at which the regimental and battalion musters in each year are to be held; to which the said commandants of companies shall add the days and place appointed for the muster of their companies for the same year, as well as the time and place of the sitting of the court of assessment; and they shall, on or before the 15th day of March in each year, deliver a certificate of the musters so ordered, and courts of assessment, to the sergeants; whose duty it shall be to receive and deliver to, or leave at the place of lodging, or the usual place of abode, of each subaltern and non-commissioned officer, musician and private, in the company to which he belongs, a like written notice, on or before the first day of April in each year; but in all cases where any person may move into the bounds of any company, or arrive at the age of eighteen years, after the first day of April in any year, the commandants of companies shall, as soon as possible, give to such person a like notice in the same manner: *Provided*, in all cases where any militia man receives three days notice of any muster, it shall be deemed lawful: *And provided further*, that it shall be the duty of commanding officers of companies, from time to time, to cause all persons to be notified to attend muster, who, from accident or neglect, failed to receive a notice before the first day of April.

1811.

## LIEUTENANTS AND ENSIGNS.

Sec. 10. It shall be the particular duty of the lieutenants and ensigns to assist in the exercise and discipline of their companies, and report every defalcation or disobedience in the government and exercise thereof.

Sec. 11. All officers of every grade shall implicitly obey the orders of their superiors; and in case of absence, death or inability of any officer, the next in rank shall take the command, and discharge all the duties required by this act of his superior, during such vacancy, absence or inability.

Sec. 12. In case the brigadier general should fail to notify the commandants of regiments of the time of holding the regimental and battalion musters, in the bounds of his brigade, within the time prescribed by law, the colonel commandant of such regiment shall appoint his own regimental and battalion musters; or in case of failure on his part, the majors of the battalions composing such regiment shall appoint and give notices of the times and places of holding their battalion musters.

## GENERAL, BRIGADE AND REGIMENTAL STAFF.

Sec. 13. The adjutant general shall be appointed and commissioned as other officers, and keep his office in the state-house; shall keep a fair record of all orders and communications which he shall from time to time receive from the commander in chief of the militia of this state; shall receive the annual returns made to him from the generals of division; and shall make from the several division returns, a general return of the whole strength of the militia of this state; which he shall lay before the commander in chief, on or before the 10th day of December in each year; a duplicate of which return he shall, without delay, forward to the secretary at war of the United States: and he shall perform such other duties as are enjoined on him by the laws of the United States. He shall furnish blank printed forms of annual returns of divisions, brigades, regiments, battalions and companies, on or before the first day of May in each year: and the public printer is hereby authorized and required to print the same, on application of the adjutant general. All letters or packages coming to or sent by him, relative to the duties of his office, by mail, shall be paid for by the state, on the same being certified

by the governor, that they relate to the duties of his office : which the governor shall certify to the auditor of public accounts, for payment accordingly. He shall be entitled, as a compensation for the duties enjoined on him by the laws of this state and the United States, one hundred and fifty dollars per annum ; for which the auditor of public accounts is hereby required to issue his warrant on the treasurer for payment accordingly : *Provided however*, he shall produce the governor's certificate that the duties of his office shall have been faithfully performed.

1811.

Sec. 14. Aid-de-camps shall be commissioned by the governor ; whose duty it shall be to execute the orders of the major general to whom they are attached.

Sec. 15. Brigade inspectors, adjutants, quartermasters, paymasters and surgeons shall be commissioned by the governor.

Sec. 16. Judge advocate and provost martial shall be appointed to the several courts martial, by said courts hereafter ordered. It shall be the duty of the judge advocates, to take and keep safely, a true statement of all proceedings, whether pleas, evidence or defence, made before a court martial ; a fair copy of which, after being signed by the president, shall be delivered to the governor, or officer ordering such court martial, (as the case may be) within twenty days after their adjournment ; and to prosecute for the state. The provosts martial shall attend and execute the orders of the court.

## COURTS MARTIAL.

Sec. 17. Courts martial shall be appointed for the trial of all offences arising from neglect of duty, disobedience of orders, or disorderly and ungentlemanly behaviour.

Sec. 18. General courts martial may be ordered by the governor, when he shall think it necessary ; where a major general shall preside, and be composed of eight additional members, two of whom shall be brigadiers and the other six field officers. The proceedings of this court shall be approved or disapproved by the governor.

Sec. 19. Division courts martial may be appointed at the discretion of the major general ; where a brigadier shall preside, who, with eight field officers, two of

1811. whom shall be colonels, shall compose the court; whose proceedings shall be approved or disapproved, and whose sentence shall be affirmed or reversed, by the major general who ordered such court; subject, however, to an appeal to the governor, for his final affirmance or reversal.

Sec. 20. Brigade courts martial may be appointed at the discretion of the brigadier general; where a lieutenant colonel shall preside, who, with eight additional officers, two of whom shall be majors, and the other six captains, shall compose such court; whose proceedings shall be approved or disapproved by the brigadier general ordering such court; subject, however, to an appeal to the major general for his final affirmance or reversal.

Sec. 21. Regimental courts martial may be appointed at the discretion of the lieutenant colonel commandants of regiments; where a major shall preside, who, with eight other additional officers, two of whom shall be captains and the other six subalterns, shall compose such court; whose proceedings shall be approved or disapproved by the commanding officer of the regiment; subject, however, to an appeal to the commandant of the brigade, for a final decision.

Sec. 22. In general courts martial none shall be tried below the grade of a general officer, or the general staff; in a division court martial none shall be tried below the grade of a field officer; in a brigade court martial the field officers and brigade staff may be tried, or a captain, for good cause shewn; in a regimental court martial all officers below the grade of a field officer, as well as regimental staff officers, shall be tried.

Sec. 23. Upon the convening of either of the courts herein directed, the president thereof shall administer to the judge advocate the following oath or affirmation: "I do solemnly swear, or affirm, (as the case may be) that I will truly and faithfully execute the office of judge advocate to this court, so long as I remain in office, to the best of my abilities, and according to the laws of this state; and that I will not, when secrecy is required, disclose or discover the opinions of any court martial wherein I serve, unless to the commanding officer, until he has approved or disapproved thereof; nor will I at any time disclose or discover the opinion of any particular member of the court martial, unless re-

quired to give evidence in a court of justice." Which oath shall be deemed a competent qualification to such judge advocate while he continues to act. And the judge advocate shall proceed to qualify the president and members, by administering to them the following oath: "You, and each of you, do swear, (or affirm) that you will well and truly try and determine, according to evidence, agreeably to justice, the best of your understanding, and the laws of this state, between the commonwealth of Kentucky and the prisoner to be tried; and you will not disclose the opinions of this court martial, where secrecy may be required, until made public by the proper officer; nor will you at any time disclose the vote or opinion of any particular member thereof, unless called upon by a court of justice to give evidence." Whereupon the court shall proceed to the business laid before them, and adjourn from day to day until it is finished; of all which, a complete record shall be made, and signed by the president; and the court shall be dissolved. Upon the disclosure of the opinions or sentence of any court martial, any person may, according to the directions of this act, appeal therefrom, by filing a written notice with the officer to whom the appeal is made, within thirty days after the sentence is published; whose duty it shall be to order up before him the proceedings of such court, for a final decision, which shall be given within thirty days thereafter.

1811.

Sec. 24. Any person having cause of complaint against any commissioned officer, shall file with the governor, major general, brigadier general, or commandant of a regiment, the charges, certified in form; upon which an enquiry, or arrest, at the discretion of such officer having the power to order, may be awarded: *Provided*, that from the commencement of an arrest, the court martial shall be ordered to meet within thirty days; of the time and place of which, the officer arrested shall have at least fifteen days notice, as well as a copy of the charges lodged against him: *And provided also*, that if upon the meeting of such court it shall appear that from the absence of witnesses, inability or sickness of the parties, or for any good cause shewn, a fair and impartial trial could not then be had, they may adjourn the court to a future day, not exceeding three months. And on the trial of any officer or officers, before any

1811.

court martial, the accused shall not have it in his power to object to the president of the court, but shall have the right of peremptory challenge to any other three members of such court, and to as many more as he can shew good cause, to be adjudged of by the court; in which case another or other members shall be summoned to fill their place or places, by order of the president of such court: *And provided also*, that any person wishing to lodge a complaint against an officer, shall, before making such application to the officer who is to order the court martial, make oath before some justice of the peace, that the charges which he is about to exhibit, are true, to the best of his knowledge and belief.

Sec. 25. A court for the assessment of fines, and receiving the returns of delinquents, shall be held for each regiment on the last Monday in November in every year; which shall be composed of a majority of the captains of such regiment, the eldest of whom present shall be president of said court: *Provided however*, that if from a vacancy, or absence of any captain, the next officer in rank in such company shall attend. Which court, together with the regimental judge advocate and provost martial, may proceed to business; but in case the judge advocate fails to attend at any court of assessment, one may be appointed *pro tem.*; but all other commissioned company officers may attend, if the please, who, *ex officio*, shall be members of said court. This court is to examine all returns laid before them; to have the delinquents called, to shew cause why judgment should not be awarded against them, and to deliver their opinion in every case to the judge advocate, who is hereby directed to make a fair record thereof. This court shall also have the power of excusing from militia duty aged and disabled persons, during their disability; and to hear evidence to determine the same; they shall have power to adjourn from day to day; to compel the attendance of absent members; and when their business is completed, the president shall sign the record of their proceedings, and the court for that year shall be dissolved: *Provided*, that previous to their proceeding to do any business whatsoever, the president thereof shall administer to the judge advocate the following oath or affirmation: "I ———, do solemnly swear (or affirm, as the case may be) that I



will truly and faithfully execute the duties of judge advocate to this court, so long as I remain in office, to the best of my abilities, and according to the laws of this state." Which oath shall be deemed a competent qualification to such judge advocate while he continues to act; during which time he shall be exempt from militia duty. And the judge advocate shall proceed to qualify the president and members, by administering to them the following oath: "You, and each of you, do swear (or affirm) that you will truly and diligently enquire of and decide upon the several delinquencies reported to you, and in every case decide according to law, and the best of your skill and understanding, without favor or hope of reward; so help you God."

1811.

## RETURNS OF THE STRENGTH OF MILITIA.

Sec. 26. That all commanding officers of companies, after their military exercise for the day shall be over, in the month of June in each and every year, shall proceed to make their annual company returns, agreeably to forms which shall be furnished them by the adjutant general; in which shall be expressed the military strength, arms and accoutrements of such company; who, after countersigning the same, shall deliver it to the commandant of his battalion, on or before the 10th day of July in each year.

Sec. 27. That all commandants of battalions shall make from the company returns under their command, a return of the strength of their battalions, agreeably to the form prescribed by the adjutant general, which they shall deliver to the adjutants or commandants of their respective regiments, on or before the first day of August in each year.

Sec. 28. That it shall be the duty of commandants of regiments to cause their adjutants to make out from the battalion returns, on or before the tenth day of August in each year, regimental returns, agreeably to the forms prescribed by the adjutant general, and lay the same before them for their examination and signature; and it shall be the duty of the said commandants to cause their adjutants to forward the returns of regiments to the inspectors of their respective brigades, on or before the first day of September in each year.

Sec. 29. That it shall be the duty of the brigade majors to make out from the regimental returns, on or be-

1811. } fore the tenth day of September in each year, two brigade returns, agreeably to the form prescribed by the adjutant general, and lay the same before the said commanding officers of brigades for their examination and signatures; one of which returns the said brigade inspectors shall forward to the commanding officer of the division to whom they belong, on or before the tenth day of October in each year.

Sec. 30. It shall be the duty of the major generals to cause their aids to make out from the brigade returns, on or before the first day of November in each year, two fair division returns, agreeably to the form prescribed by the adjutant general, and lay the same before the said commanding officer of divisions, for his examination and signature; one of which returns the said commandants of divisions shall forward to the office of the adjutant general, on or before the last day of November in each year.

#### MUSTERS.

Sec. 31. There shall be in the month of October in every year, a regimental muster, at such places as the commandant belonging thereto may direct; where every field, staff and regimental commissioned and non-commissioned officer, every private and musician, shall attend, armed and equipped according to law.

Sec. 32. There shall be a battalion muster in every battalion, at such place as the commandant thereof shall direct, in the month of May in each year; where every officer, non-commissioned officer, musician and private belonging thereto, as well as the regimental staff, shall attend, armed and equipped according to law.

Sec. 33. That there shall be four company musters held in each year, to be appointed at the discretion of the commanding officers of companies, as to time and place, viz. one within each of the months of April, June, August and September; where every commissioned, non-commissioned officer, musician and private shall attend, armed and equipped according to law.

Sec. 34. At the several musters herein directed to be held, the troops shall be exercised at least three hours on each day, agreeable to the rules prescribed by congress, except such deviations therefrom as may be rendered necessary by some unavoidable circumstance; the roll shall be called at each muster or review, and the delin-

quents particularly noted by the commandants of companies, both as to absence, arms, accoutrements, and as to a refusal and failure to perform the duties required when present. It shall be the especial duty of the commanding officer at every muster, strictly to examine the arms and equipage of the troops under their command, and report their actual situation at the time of making their annual returns:

1811.

Sec. 35. It shall be the duty of the commandants of regiments to proceed and appoint a regimental drill muster, to be held for his regiment, in the month of September in each year; where the whole of the commissioned and non-commissioned officers, staff and music belonging to his regiment, at some convenient place therein, to be appointed by such commandant, shall attend, equipped and armed in such manner as the commandants thereof may direct, to be drilled and exercised by him, or under his direction; which exercise and drilling shall continue for two days in succession: *Provided*, that such commanding officers shall give due notice of the time and place of such regimental drill musters.

Sec. 36. At all regimental drill musters the commanding officer shall call the roll, note and return all delinquents, as at all other musters.

Sec. 37. At all musters and reviews, and attendance on courts martial, or courts of assessment, no person or persons are to give impediment or disturbance. Every officer and private thereof shall be free from arrest (except for treason, felony, or breach of the peace) whilst going to, attending on, or returning from any review, muster, courts martial, or courts of assessment; and any person or persons, other than those performing militia duty, who shall wilfully impede or disturb any corps or court, in their exercise or other duty, shall be apprehended and brought before a magistrate, who, upon due proof of such charge, shall adjudge against such person a sum not less than two nor more than ten dollars, and award execution, either against his body or goods, and may be put under guard, for three hours or less, by the commanding officer. And all sums so recovered shall be paid to the regimental paymaster, for the use of the regiment in which such impediment or disturbance shall have taken place. And if any private or non-commissioned officer, while on parade, shall give distur-

1811.

bance, by intentionally insulting any commissioned officer, any indecent language or menace, or in any other manner interrupting the good order of parade, he may be placed under guard by the commanding officer at such muster or review, for a time not exceeding three hours, and in addition thereto may be fined by the annual regimental court of assessment, in a sum not less than two nor more than ten dollars, to the use of said regiment.

Sec. 38. That the brigade inspectors, adjutants of regiments and commanding officers of companies, shall severally keep a book in which all returns shall be recorded, and other casual occurrences noted.

Sec. 39. *Be it further enacted*, That the resignation of all commissioned officers shall be made in the following manner, to wit: All company and staff officers of regiments, shall resign to the commanding officer of regiments; regimental field and brigade staff officers, to the commanding officers of brigades; brigadier generals and division staff, to the commanding officers of divisions; and major generals and the adjutant general, to the commander in chief of this state. And when any such commanding officer of a brigade or division shall receive the resignation of any officer, made to him as aforesaid, he shall certify the same without delay to the governor, in order that such vacancy may be supplied. When any nominations of company officers are made to the governor, according to law, to fill vacancies which may happen, it shall be the duty of commanding officers of regiments from which such nominations are made, to insert the name of the person whose place the nomination is intended to fill, designating the cause of such vacancy, whether by death, promotion, resignation, removal or otherwise.

Sec. 40. It shall be the duty of any person hereafter appointed to any office in the militia in this state, within twenty days after receiving his commission, and before he acts under it, to take the following oath: "I ——— do swear, or affirm, that I will support the constitution of the United States, and that I will be faithful and true to the commonwealth of Kentucky, so long as I continue a citizen thereof; and that I will faithfully execute the office of ——— according to law, and to the best of my understanding; so help me God." Which oath may be taken before any magistrate, or in the court of

any county, and a certificate thereof shall be endorsed upon his commission at the time of taking the oath; which officer, thus qualified, shall be respected and obeyed as such.

1811.

Sec. 41. Every regimental officer, taking the aforesaid oath, shall, within twenty days thereafter, lodge with the adjutant of his regiment a duplicate of the aforesaid oath; which duplicate shall be filed and preserved with the papers of his office. And any person who may have been commissioned as aforesaid, who fails to comply with the requisitions of this act, shall be considered as having refused to accept; and the proper officer shall proceed to have the vacancy filled as in other cases.

Sec. 42. If any officer, before he shall have taken the oath of office prescribed by this act, shall exercise any of the duties of such office, he may (if a field officer) be fined in any sum, not more than fifty dollars, at the discretion of a brigade court martial; if below the rank of a field officer, he may be fined in any sum not more than twenty-five dollars, to be assessed by a regimental court martial or court of assessment, to be applied to the use of said regiment as other fines are by this act.

Sec. 43. It shall be the duty of every officer, previous to his resigning or removing without the bounds of his command, to deliver the public arms or other public property, the laws, rolls and returns, that may be in his possession at the time of his resignation, removal or disqualification, to the next officer of his company, or to the commandant of his regiment, who shall deliver the same to the successor of such officer. Any person failing so to do shall be subject to a fine not exceeding fifty dollars, to be assessed by a regimental court martial or court of assessment, to be applied to the use of said regiment.

Sec. 44. *Be it further enacted*, That if any commissioned officer shall absent himself from the duties of his command for the space of twelve months, unless he be employed on public business, it shall be deemed a removal, and measures shall be immediately taken thereafter, by the governor, major general, brigadier general, or commandant of regiments, (as the case may be) for supplying such vacancy. And if any commissioned officer in the militia of this state shall labor under any ap-

1811.

parent incurable bodily infirmities, or mental derangements, the governor, major general, brigadier general, or commanding officers of regiments, (as the case may be) shall order a court of enquiry, which shall consist of five members; and if on testimony or personal observation, they shall report to the officer ordering such court, that the officer thus charged does actually labor under such bodily infirmities or mental derangements, to such extent as to disqualify such officer from a faithful discharge of his duties under the militia laws of this commonwealth, and if the officer ordering the court of enquiry shall approve the report of said court, the office shall thereafter be considered vacated; and the governor, major general, brigadier general, or commanding officer of regiments, (as the case may be) shall take proper measures for filling such vacancies accordingly: *Provided however*, that in all cases where the opinion of said court goes to vacate the office of any officer above the rank of a captain, the governor shall first approve the same.

Sec. 45. Within twenty days after the sitting of every regimental court of assessment, the judge advocate thereof shall make out three fair lists of all the fines assessed, and deliver the same to the commandant of the regiment; whose duty it shall be to furnish the paymaster with one; the high sheriff of his county with another, on or before the first day of February in each and every year, and take his receipt therefor, and keep one himself; which fines shall be collected and accounted for according to the provisions of this act. Any judge advocate failing to make out within the time prescribed by this act, the lists of fines herein required, shall be fined at the discretion of a regimental court martial in any sum not exceeding one hundred dollars, and in addition thereto may be dismissed from office. Any colonel or commanding officer of regiments who shall fail to place a list of the fines assessed by the annual regimental court of assessment, into the hands of the sheriff of his county for collection, by the time prescribed by this act, shall be fined at the discretion of a brigade court martial, in any sum not exceeding one hundred dollars. Each and every sheriff, or deputy sheriff, under the penalty of one hundred dollars, to be recovered on motion by the paymaster in the county

court, shall receive of and receipt to the commandants of regiments for all lists of fines against all delinquents and defaulters; as adjudged by any court of assessment or courts martial. The sheriff shall have power to apply for and receive the same, levy and make distress therefor, as in cases of county levy, if payment is withheld; for which the said sheriff shall receive the same per centum and fees for distress as are allowed for collection of the public revenue. On or before the first day of October in every year, the said sheriffs shall settle with and pay over to the regimental paymaster, all sums by them collected as aforesaid; and return upon oath an account of all insolvents and delinquents, reserving his commission as aforesaid; taking the said paymaster's receipt therefor, an attested copy of which he shall have recorded in the next succeeding county court for the county of which he is sheriff. But in case the said sheriff shall fail or refuse to pay and settle with the paymaster as aforesaid, the said paymaster shall immediately proceed to recover the monies due from the said sheriff and his securities, by motion in the county court, in the same manner that monies are recovered by the counties against their public collector of levy.

1811.

Sec. 46. The regimental paymaster shall, before he acts as such, enter into bond with sufficient security, in the county court, to be approved of by such court, to the commonwealth of Kentucky, in the sum of one thousand dollars, conditioned for the just fulfilment of all the duties herein required of him; which bond shall not be void on the first recovery. And he shall also take the following oath: "I ——— do swear I will as paymaster to the ——— regiment of Kentucky militia, truly and honestly perform the said duty, and render a just account to the best of my knowledge, when called upon by the proper tribunal."

Sec. 47. It shall be the duty of the field officers in every regiment, to call upon and settle with the paymaster in the month of November annually, or oftener, if they think proper; which settlement, signed by themselves, they shall cause to be recorded in the court of their county, at the next court after the close of such settlement: the clerk of which court shall perform such services without fee. The monies collected and funded with the regimental paymaster, shall be subject to orders,

1811.

drawn by the commandant of the regiment, for the following and other regimental purposes, to wit: The purchase of regimental and battalion standards, drums, fifes, music, (at the several regimental, battalion, drill and company musters) for services of judge advocate and provost martial of regimental courts martial, courts of assessment and appeals, adjutant, the purchase of arms, and teaching military music; all which orders shall be regularly filed and preserved by the paymaster, as vouchers in his annual settlement. For all and every duty herein specified, the said paymaster shall retain and be entitled to six per centum on all sums actually received and paid away.

Sec. 48. *Be it further enacted*, That the paymaster shall, in settling claims, pay respect to seniority; and that a younger claim shall not be settled until those of an elder date are paid off: *Provided*, the elder claimant has given due and timely notice to the paymaster of his claim; and that the paymaster, in settling with the sheriff, shall not allow for younger claims that may have been purchased up, until all the elder claims lodged as aforesaid with the paymaster, shall be satisfied.

Sec. 49. Every division, brigade and regiment, shall be kept fully officered; and rosters in each, shall, by the proper officer, be prepared, by which the detail of duty shall be regulated.

Sec. 50. In all cases where a troop of horse, infantry, artillery, grenadier or rifle company, shall be arranged, the men enlisting therein shall not be discharged from their duty in the regiment or company from which they were taken, until such troop or company shall have been mustered and returned; and no private or non-commissioned officer shall quit the same, without the consent of the captain of such troop or company, while he continues to reside within the bounds thereof, or dissolution of said company.

Sec. 51. That hereafter no person shall be permitted to join any volunteer corps, from any company of the line which contains a less number than forty-five men, including officers, without the consent of the commanding officer of such company; but at no time shall a company consist of less than thirty-two privates; and if at any time a company shall be reduced to a less number, it shall be incorporated with the adjoining companies, whilst such disability exists.



## REGIMENTAL COURT OF APPEAL.

1811.

Sec. 52. That any person fined at the annual regimental courts of assessment, conceiving himself aggrieved thereby, shall and may, at any time prior to the first day of May next succeeding the sitting of such court, appeal therefrom to the field officers of his regiment, who, or a majority of them are hereby constituted a court of appeals; who, having taken an oath to act impartially therein, shall have power to remit such fine or fines, if in their opinion the same shall have been unjustly assessed. In all cases, appeals shall be taken in the following manner, to wit: The person complaining shall go before some justice of the peace for his county, and make oath, that he considers himself aggrieved by the decision of the court of assessment; and he may state his defence also on oath; and he shall take such magistrate's certificate, and file the same with the commanding officer of his regiment; who thereupon shall issue his order to the sheriff of his county, suspending the collection of such fine or fines, until such appeal can be heard by the court of appeals. Any excuse or defence made before any court of assessment or court of appeals, shall be heard on oath, which may be administered by the judge advocate of said court. On the first Monday in May in each and every year, the court of appeals shall meet and sit at the same place where the regimental court of assessment held in the preceding November, shall have assembled; where the judge advocate of the court of assessment shall attend and record the proceedings of said court; or if he fails, the court shall appoint one *pro tem.* which court shall confirm or reverse the decision of the regimental court of assessment. It shall be the duty of the judge advocate of every court of appeals, within ten days after the sitting of such court, to certify to the sheriff of his county the decision had on all cases laid before the court of appeals, whether confirmed or reversed, and also to furnish the paymaster of his regiment with a copy thereof, to enable him to settle with said sheriff.

Sec. 53. That it shall be the duty of the judge advocate of every court of assessment, upon the application of the commanding officer of each company within his regiment, to furnish such officer with a list of all fines assessed on every member of his company, at the pre-

1811. ceding court of assessment; and it shall be the duty of every commanding officer of a company, at his April muster in each year, to make a public declaration to his company of the names of each and every person fined, belonging thereto, at the last annual court of assessment held for his regiment.

Sec. 54. That the repealing clause in the first section of this act, shall not extend to or do away the means of collecting and receiving all fines heretofore assessed: *And provided also*, that all persons fined at any regimental court of assessment, held in the month of November last, shall and may appeal, as in cases of fines hereafter assessed.

Sec. 55. The governor for the time being shall, when he deems it necessary, call forth into the service of this state, such a number of militia as he shall judge expedient. A tour of duty shall be estimated at thirty days; and when employed in the service of the state, no militia man shall be compelled to serve more than two tours without discharge. If called into the service of the United States, each militia man, or corps, shall receive a credit for a tour of duty for every thirty days he may be so employed: *Provided*, in every case the duty shall actually have been rendered.

Sec. 56. That any commissioned officer who may be ordered on a tour of duty, and failing to march agreeably to such orders, without a sufficient excuse, shall be cashiered, and moreover be liable to be fined in any sum not exceeding three months pay. — And any non-commissioned officer, musician or private, failing to march when ordered, without a reasonable excuse, shall be considered as a deserter, and treated accordingly, unless he shall furnish a good able-bodied substitute, to be approved of by the commanding officer of such detachment.

Sec. 57. All courts martial and of assessment may issue summons for witnesses; or previous to the sitting of such court, the president thereof, or any field officer, may issue such subpoena; the process to be served by the provost martial, or any sheriff or constable; and if any such witness shall fail to attend, without a reasonable excuse, he shall be fined in any sum not exceeding three dollars. And it is hereby declared, that the several courts possess competent power to carry into execution the regulations granted.

## UNIFORM.

1811.

Sec. 58. As the reputation of the service will be materially affected by a conformity to a regulation so essential in a military point of view,

*Be it further enacted,* That at all musters, reviews, courts martial or courts of assessment, as well as in actual service, the following shall be the uniform and equipments of the following commissioned officers, to wit: Major generals, brigadier generals, and general staff officers, shall appear in uniform and side arms, to wit: with a coat of blue, lappells of buff, gold epaulets, and buff underclothes, boots, spurs, a round black hat, cockade, plume and small sword or hanger. Lieutenant colonels, majors and brigade inspectors, shall appear in uniform and side arms, viz. a coat of blue, lappells of red, silver epaulets, white waistcoat and blue pantaloons, boots, spurs, a round black hat, cockade, plume, and small sword or hanger. Captains, subalterns and regimental staff officers, (except surgeons, chaplains and surgeon's mate) shall appear in uniform and side arms, viz. with a coat of blue, lappells of red, epaulets of silver, and white underclothes, a round black hat, cockade, plume and sword or hanger: *Provided,* that for good cause shewn the courts shall not fine the subalterns for not appearing in uniform: *And provided also,* that the officers of the dragoons, artillery, light infantry and rifle corps, may wear the uniform of their respective corps: *Provided however,* that all officers having hats or other uniforms, according to the provisions of the law heretofore in force, shall be permitted to appear on duty in them, whilst such uniform or hat shall last.

Sec. 59. A majority of the commissioned officers of each regiment may adopt the colour of a plume to be worn in their regiment.

Sec. 60. All officers shall reside in the bounds of the division, brigade, regiment, battalion or company to which they may severally belong.

Sec. 61. Parents, guardians, masters or mistresses, shall be accountable for and pay the fines of their children, wards or servants who are under twenty-one years of age: *Provided,* that parents shall be responsible only when their children reside with them.

1811.

Sec. 62. As sanctions are necessary to enforce every provision in any law, and as the phraseology of this act may convey an idea that the performance of the duties enjoined and directed to be performed by it, are discretionary, it is hereby declared to every officer, non-commissioned officer, musician and private, that the duties herein directed are to be specifically and positively performed; and that all and every delinquent, upon a failure therein, shall and may be charged with disobedience of orders, neglect of duty, or disorderly and ungentlemanly behaviour. That courts martial shall be at the discretion of those authorised to order the same, or of a court of enquiry; whose duty it shall be to cashier, dismiss from service, reprimand or acquit those accused; and also to assess any fine herein imposed, either in addition to or abstracted from any other punishment.

## COURTS OF ENQUIRY.

Sec. 63. In cases where a court of enquiry may be ordered to examine into the nature of any transaction, accusation or imputation against any commissioned officer, the said court shall consist of at least three and not more than five members; the eldest officer of which shall be president of said court. They shall appoint some suitable person as recorder, to reduce the evidence and proceedings to writing; all of whom shall be sworn to the faithful performance of their duty before some magistrate. This court shall have the same power to summon witnesses as a court martial, and to examine them upon oath; but they shall not give their opinions on the merits of the case, excepting they be thereto specially required. The parties accused shall also be permitted to cross-examine and interrogate the witnesses, so as to investigate fully the circumstances in question. The proceedings of a court of enquiry must be authenticated by the signature of the recorder and president, and delivered to the officer ordering such court.

Sec. 64. *And be it further enacted,* That where any person subject to military duty shall, after being fined by any court for the assessment of fines, remove into the bounds of another regiment, or into any of the counties of this state, it shall be lawful for the commanding officer of the regiment where the fine was imposed, to send a certified copy of such fine into the county where such

delinquent shall have removed to, and put into the hands of the sheriff of such county the certified copy ; and the sheriff shall proceed to collect and account for the same in the manner that other fines are accounted for by law. It shall be the duty of commandants of regiments, on or before the first day of February in every year, to re-list with the sheriff of his county all such fines as were returned delinquent by the sheriff in the preceding year, except those provided for in this section, who had so removed, under the same penalties for neglect, or refusal to collect or account for, as is provided for in the 45th section of this act.

1811.

Sec. 65. Each and every brigadier general and commandant of regiments shall be entitled to one person to carry their orders, returns, &c. who shall be exempt from militia duty during their appointment.

Sec. 66. *Be it further enacted,* That it shall be the duty of the several brigade inspectors, at the regimental and battalion musters, to notice and report all delinquencies of general and field officers, which may happen ; and shall return such lists of delinquents, if a field officer, to the brigadier general, who may order a court for the trial of such delinquencies accordingly ; and if a brigadier general, to the major general commanding the division, who may in like manner order a court for the trial of such delinquent.

Sec. 67. It shall be the duty of the several adjutants of regiments, at the regimental and battalion musters, to notice and report all delinquencies of captains, subalterns or staff officers which may happen ; and shall return such lists of delinquents to the next court of assessment held in his regiment, who shall have power to fine such delinquents for their neglect.

Sec. 68. That the brigade inspectors shall be allowed one dollar and fifty cents per day for their services : *Provided however,* that before any money shall be drawn from the treasury, they shall produce an account of the services rendered, together with their brigadier's certificate of a faithful discharge of every duty assigned them for the year ; which account shall be laid before the governor for his approval ; which, if approved, the auditor of public accounts shall draw a warrant on the treasury for the payment thereof accordingly.

1811.

## DELINQUENT RETURNS TO THE COURT OF ASSESSMENT.

Sec. 69. It shall be the duty of all captains, or commandants of companies, to make a due return of delinquencies which may happen within that year, either as to absence, arms and accoutrements, and as to a failure or refusal to perform duty when present; also of all such non-commissioned officers or privates who may have given disturbance at any musters of their companies; which return shall be delivered to the judge advocate of the court of assessment, on or before the last Monday in November in each year: *Provided however*, that no captain or other officer shall be bound to return any person as a delinquent, who, to the knowledge of said captain, or any other credible person of his company, was sick, or unable to attend by reason of any bodily infirmity, or was absent from the county on indispensable business, at the time of such muster: *Provided also*, that all such excuses shall be on oath, which may be administered by the captain or commanding officer of the company.

## ENROLMENT AND CLASSIFICATION OF COMPANIES.

Sec. 70. Each commandant of a company shall lay off his men into ten classes, for an equal routine of duty, and when called upon shall begin with the first. He shall be observant in enrolling all the men within his bounds subject to militia duty, including all who may from time to time settle or reside therein for the space of ten days; also, all those who shall from time to time arrive at the age of eighteen years: *Provided however*, that no person shall be enrolled who has not been an inhabitant of this state for the space of three months.

Sec. 71. All fines assessed under any of the provisions of this act, on any general, field or staff officer, other than regimental staff, shall be paid into the public treasury. It shall be the duty of all officers ordering such courts martial, to place a list of the fines so assessed into the hands of the sheriff of the county in which such delinquent shall reside, within thirty days after a final decision thereon is had, and take duplicate receipts of the sheriff therefor; one of which said officer shall transmit to the auditor of public accounts by mail, who shall cause the sheriff aforesaid to settle and account for, as in case of other public dues, within six months after such list shall have been placed in his hands.

Sec. 72. The judge advocate of every general, division or brigade courts martial which may be instituted under the provisions of this act, shall be allowed the sum of two dollars per day by the said court, which shall be certified by the president thereof; and each witness legally summoned and attending on such court, shall be allowed fifty cents per day for such attendance, with an addition of mileage as in other cases. The provost attending such court shall be allowed one dollar per day, to be certified as aforesaid. And the auditor of public accounts shall issue his warrant on the treasurer for payment out of any monies in the treasury not otherwise appropriated.

1811.  
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Sec. 73. *And be it further enacted*, That if a sufficient number of officers do not attend to form a court martial or court of assessment, at the time appointed for holding the same, any one or more who does attend, may adjourn from day to day, and send for the absentees, until a sufficient number shall attend to constitute a court. And it shall be the duty of the secretary of state, and he is hereby required from time to time to furnish the adjutant general with a list of all general, staff and field officers who may be commissioned by the governor.

Sec. 74. That all sergeants who deliver notices to the non-commissioned officers and privates of the time and place of holding musters in this state, shall return to their respective commandants of companies, on oath, from time to time, a list containing the names of the persons by them notified; and if not delivered by them in the time prescribed by law, he shall also note the time such notice was delivered; which oath any commandant of a company is hereby authorised to administer; which list or lists shall be returned by the respective commandants of companies to the judge advocate of the regiment to which they belong, on or before the day of the sitting of the court of assessment, to be by him laid before said court, which shall be sufficient evidence of notice to delinquents; and upon any charge in writing, lodged with the judge advocate of such court prior to or during its sitting, of a failure or neglect of duty, of any officer or officers, for which he or they are subject by law to be fined, it shall be lawful for the court, when the officer or officers are below the grade of a field offi-

1811. cer, to determine the same; subject to the same appeal that fines against non-commissioned officers and privates are now by law subject to.

Sec. 75. It shall be lawful for commandants of companies to discharge any person from militia duty, upon his producing an affidavit from some justice of the peace that he believes, from the best information he has, that he is forty-five years of age.

Sec. 76. That all troops of horse not already belonging to or forming a part of any regiment of cavalry, or which may hereafter be permitted to be raised, shall be considered as attached to and forming a part of such regiment of the line within the bounds of which the captain of such troop resides, until the same is detached therefrom and annexed to a regiment of cavalry agreeably to law. And no person shall be permitted to join hereafter a rifle or light infantry company, out of the battalion within which he resides.

Sec. 77. That the commandants of companies shall, at their regimental muster in each year, make a public proclamation of all the delinquents they are about to return to the court of assessment.

Sec. 78. That the residence of every militia man in this state shall be considered to be at the place where he has his lodging.

Sec. 79. That no sergeant or other non-commissioned officer shall be compelled to serve as such for a longer time than one year.

Sec. 80. That upon failure of the paymaster of any regiment to pay over to the order or orders of the commandant thereof, either the whole or any part of the amount of monies belonging to his regiment, in his hands, the same may be recovered on motion in the county court where his bond is filed; and the said court is authorised to give judgment against such paymaster and his security or securities, together with ten per centum damages: *Provided*, ten days notice of such motion be given by the holder or owner of such order.

Sec. 81. Any officer acting in the absence of his superior officer, shall be subject to the several penalties imposed by this act on such superior officer, for a failure to perform the duties devolving on him by reason of such absence.

Sec. 82. It shall be the duty of each captain, annually, on or before the tenth day of May, to furnish the



sergeant major of his regiment with a list of the names of the sergeants and corporals of his company; and such sergeant major shall keep a roster thereof, by which the detail of their duty shall be regulated.

1811.

Sec. 83. It shall be the duty of the commandant of companies to appoint his sergeants, annually, at his April muster: also from time to time thereafter, appoint others to fill the places of those who may have removed or refused to serve.

Sec. 84. All fines arising on any troop of horse, company of artillery, light infantry or riflemen, shall be severally applied to the use of said company; which fines and amercements shall be collected, funded and applied as herein directed.

## PAY.

Sec. 85. That the following pay be allowed the several officers herein after mentioned, for their services arising under this act, to wit:

To each judge advocate of a regimental court martial or court of assessment, to be paid by the paymaster thereof, by order of the commandant, one and a half dollars per day.

To each provost attending any regimental court or court of assessment, to be paid by the paymaster thereof, by order of the commandant, one dollar per day.

To the adjutants of regiments, to be paid by the regimental paymaster, by orders drawn by the commandants of regiments, one and a half dollars per day.

## FINES.

Sec. 85. That the fines inflicted under this act shall be as follows, without a reasonable excuse, viz.

*Major General*—On any major general who fails to perform the duty or duties required of him, any sum not more than fifty dollars nor less than twenty dollars; for failing to uniform and equip himself according to law, any sum not more than thirty dollars nor less than fifteen dollars.

*Brigadier General*—On every brigadier general, for failing to make his annual return, forty dollars; for failing to appoint the regimental and battalion musters in his brigade, thirty dollars; for failing to review his brigade, for each regiment ten dollars; for failing to attend when ordered on a court martial, twenty dollars; for failing to uniform and equip himself according to law, twenty dollars.

1811.

*Adjutant General*—On the adjutant general, for failing to perform the duty or duties required of him, any sum not exceeding fifty dollars.

*Commandant of a Regiment*—On every commandant of a regiment, for failing to convene the field officers and captains of his regiment, to fill vacancies, ten dollars; for failing to have his annual regimental return made and transmitted to the brigade inspector, twenty-five dollars; for failing to appoint the place of mustering his regiment, or place of holding a court of assessment, twenty dollars; for failing to give notice of regimental and battalion musters, twenty dollars; for failing to attend and exercise his regiment at the annual muster, fifteen dollars; for failing to attend each battalion muster, five dollars; for failing to attend a court of appeals, ten dollars; for failing to attend when ordered on a court martial or court of enquiry, ten dollars; for failing to attend the regimental drill muster, ten dollars per day; for failing to settle with the paymaster of his regiment, one hundred dollars; for failing to uniform and equip himself according to law, twenty dollars.

*Majors*—On every major, for failing to attend a board of officers to fill vacancies, five dollars; for failing to make his annual battalion return, twenty dollars; for failing to appoint the place of mustering his battalion, or places of holding the regimental muster and court of assessment, fifteen dollars; for failing to give notices of regimental and battalion musters, fifteen dollars; for failing to attend and exercise his battalion at his battalion muster, ten dollars; for failing to attend a regimental muster, ten dollars; for failing to attend the court of appeals, ten dollars; for failing to attend when ordered on any court martial or court of enquiry, ten dollars; for failing to attend the regimental drill muster, per day, eight dollars; for failing to settle with the paymaster of his regiment, seventy-five dollars; for failing to uniform and equip himself according to law, fifteen dollars.

*Captains*—On every captain and commandant of a company, for failing to attend a board of officers to fill vacancies, five dollars; for failing to make his annual company return, ten dollars; for failing to give notice to his sergeants, of the time and place of holding regimental and battalion musters, and courts of assessment,

ten dollars ; for failing to appoint the time and place of holding company musters, and giving notice thereof, ten dollars ; for failing to attend any regimental, battalion, company or drill muster, five dollars per day ; for failing to attend the court of assessment, five dollars per day ; for failing to attend when ordered on any court martial or court of enquiry, five dollars ; for failing to enrol and class his company, ten dollars ; for failing to make a return of delinquents to the annual court of assessment, ten dollars ; for failing to appoint sergeants in his company, five dollars ; for failing to make a declaration of the delinquents of his company, about to be returned to the court of assessment, five dollars ; for failing to uniform and equip himself according to law, ten dollars ; for failing to make a declaration at his April muster, of all the delinquents of his company, fined at the preceding regimental court of assessment, five dollars.

1811.

*Lieutenants, Ensigns and Cornets*—On every lieutenant, ensign or cornet, for failing to attend any regimental, battalion, company or drill muster, four dollars per day ; for failing to attend a court of assessment, when necessary, four dollars per day ; for failing to attend when ordered on any court martial, or court of enquiry, four dollars ; for failing to uniform and equip himself according to law, five dollars.

*Sergeants*—On every sergeant, for failing to attend any muster, any sum not more than three dollars nor less than one dollar per day, when appointed and duly notified thereof ; for refusing to serve, or any neglect of duty, in the time or manner of giving notices of musters and courts of assessment, any sum not more than three dollars nor less than one dollar ; for appearing at any muster and failing to parade, or refusing to obey the orders of his commanding officer, any sum not less than two dollars nor more than four dollars ; for appearing on parade at any muster without being armed according to law, any sum not exceeding fifty cents, unless it shall appear such sergeant is unable to purchase arms ; for failing to return on oath to his captain, when required, a list of persons notified by him to attend musters, any sum not more than four dollars nor less than two dollars.

1811.

*Corporals*—On every corporal, for failing to attend any muster, not more than three dollars nor less than one dollar per day; for appearing at any muster and failing to parade, or refusing to obey the orders of his commanding officer, any sum not less than two dollars nor more than four dollars; for appearing on parade at any muster, without being armed according to law, any sum not exceeding fifty cents, unless it shall appear such corporal is unable to purchase arms.

*Musicians*—On every musician, for failing to attend any muster, any sum not less than one nor more than three dollars per day.

*Privates*—On every private, for failing to appear and do duty at every muster, for each and every offence, any sum not less than one dollar nor more than three dollars; for appearing at any muster and failing to parade, or refusing to obey the orders of his officer, any sum not less than two dollars nor more than four dollars; for appearing on parade at any muster without being armed according to law, any sum not exceeding fifty cents, unless it shall appear such private is unable to purchase arms, without injuring his family, which fact shall be ascertained by the court of assessment.

*Aid-de-Camp*—On every aid-de-camp, for failing to uniform and equip himself according to law, fifteen dollars; for any neglect of duty enjoined by law, for each offence fifteen dollars.

*Brigade Inspectors*—On every brigade inspector, for failing to uniform and equip himself according to law, fifteen dollars; for any neglect of duty enjoined by law, for each offence fifteen dollars.

*Adjutant*—On every adjutant, for failing to uniform and equip himself according to law, five dollars; for any neglect of duty enjoined by law, for each offence five dollars.

*Paymaster*—On every paymaster, for failing to uniform and equip himself according to law, five dollars; for failing to enter into bond for the faithful discharge of the duties of his office agreeably to the provisions of this act, within six months from the passage thereof, any sum not exceeding fifty dollars; for failing to settle with the sheriff or field officers annually, in the months herein directed, for each and every neglect any sum not more than one hundred dollars nor less than fifty

dollars; for each and every neglect of duty not herein otherwise provided for, five dollars.

*Surgeon*—For any neglect of duty enjoined by law, for each offence five dollars; for failing to attend court martial for the examination of invalids, five dollars.

*Quartermaster*—On every quartermaster, for failing to uniform and equip himself according to law, five dollars; for any neglect of duty enjoined by law, for each offence five dollars.

*Sergeant Major*—On every sergeant major, for any neglect of duty enjoined by law, for each offence four dollars.

*Judge Advocate*—On every judge advocate, for any neglect of duty enjoined by law, not herein otherwise provided for, for each offence five dollars.

## REGIMENTS OF CAVALRY.

Sec. 87. That when it shall appear to the governor, either by returns made to the adjutant general's office, or the certificate of the commanding officer of a division, that there are within the bounds of his command four or more troops of cavalry, the governor shall, at his discretion, organise the same into a regiment, and appoint a colonel to command each regiment thus organised, and a major to command each battalion thereof, as other field officers are appointed.

Sec. 88. That the governor, upon organising any regiment of cavalry, shall designate the brigade to which such regiment shall be attached.

Sec. 89. That all annual returns of the strength, arms and equipage of any regiment, battalion or troop of cavalry thus organised, shall be made at the same times that those of a similar nature are by this act required to be made by officers of the same rank in regiments of infantry of the line.

Sec. 90. That it shall be the duty of the colonel of each regiment of cavalry, as well as the staff officers thereof, to attend their regimental and battalion musters, and perform the like duties required by this act of the same grade of officers in the line of infantry.

Sec. 91. That each commanding officer of a regiment of cavalry, shall convene their regiment, once in each and every year, at such time in the month of October as the commanding officer of the brigade to which his regiment is attached shall appoint; where his regiment

1811. shall continue for two days in succession, to perform such evolutions and exercise as he may direct.

Sec. 92. That each major of cavalry shall convene their battalions once in every year, at such time in the month of May as the commanding officer of the brigade to which his regiment is attached shall direct; where his battalion shall continue for two days in succession, to perform such evolutions and exercise as he may deem proper to order.

Sec. 93. That the captains of each troop forming a part of any regiment of cavalry, shall convene their companies twice in each year, viz. once in the month of April and once in the month of June, where he shall exercise and train his company at least three hours on each day.

Sec. 94. That there shall be held annually for each battalion of any regiment of cavalry, a court for the assessment of fines; who shall assemble at the same time, have the same powers, and be governed by the same regulations, that regimental infantry courts of assessment are, under the provisions of this act: *Provided however*, that at least one captain and three other commissioned officers thereof shall be present.

Sec. 95. That appeals may be had from the battalion courts of assessment of cavalry, to the field officers of their regiment; who shall meet at the same time, and have the same powers, and be governed by the same regulations that regimental infantry courts of appeal are herein directed.

Sec. 96. That all fines assessed by any court of assessment, or court martial, in any regiment of cavalry, shall be applied to the use of such regiment, and in the same manner that similar fines assessed by a regimental infantry court are herein appropriated.

Sec. 97. That it shall be the duty of every judge advocate of a battalion court of assessment, (for cavalry) in making out the lists of fines assessed by his court, to make separate lists of all fines assessed on delinquents, in each company within the bounds of their battalion, in order that the proper officer may place the same in the hands of the sheriffs of such counties respectively for collection.

Sec. 98. That all vacancies in a troop of cavalry, belonging to any such regiment, shall be filled as in regi-

## XX. YEAR OF THE COMMONWEALTH.

315

ments of the line : and where any new troop may be arranged and raised, within the bounds of a regiment of cavalry, the officers thereof shall be appointed in like manner.

1811.

Sec. 99. That all the duties required by this act, of any commissioned or non-commissioned officer, musician and private of regiments of infantry of the line, shall be performed by the commissioned and non-commissioned officers, musicians and privates of the like grade in regiments of cavalry, under the same fines and penalties : *Provided*, that there shall not be any drill muster of the officers of a regiment of cavalry.

Sec. 100. That the paymaster of each regiment of cavalry shall have power to call on, settle with and receive from the several paymasters of the regiments of the line, from which such regiment of cavalry shall have been formed, for any monies in their hands belonging to any troop of cavalry of his regiment ; who shall severally pay over all such sums of money in their hands.

Sec. 101. That the commanding officer of each brigade to which any regiment of cavalry shall have been attached, shall, at the same time he issues his orders to the other commandants of regiments within his brigade, issue to the colonel of such regiment of cavalry like orders.

Sec. 102. That all powers given by this act to any officer of a regiment of infantry of the line, shall and may be exercised by officers of the same grade in regiments of cavalry.

Sec. 103. That all commissioned and non-commissioned officers, musicians and privates of each regiment of cavalry, shall be fined for each day they fail to muster, the same sum that is inflicted by this act on those of a like grade in regiments of infantry of the line.

Sec. 104. Within six months after the passage of this act, the field officers of each regiment shall furnish the adjutant with a copy of the bounds of the battalions and companies, who shall keep a record thereof, and also of all other modifications or boundaries of new companies, thereafter made.

Sec. 105. *Be it further enacted*, That when any man belonging to any society who hold a community of property, shall be fined by virtue of this act, and refuseth or is not able to pay said fine, it shall be the duty of the she-

1811. } riff, or other proper officer, to call on the agent or superintendent of the common stock or firm of said society or compact, for said fine or fines; and in case said agent shall refuse to pay the same, or be absent, it shall be the duty of the sheriff or officer aforesaid, to execute and sell so much property belonging to said stock, as shall be sufficient to satisfy said fine or fines and costs.

#### CHAPTER CCXCVIII.

*An ACT authorising the publication of Advertisements in The American Statesman, The Western Courier, The Bardstown Repository, and The Telegraph.*

Approved December 16, 1811.

*BE it enacted by the general assembly of the commonwealth of Kentucky,* That it shall be lawful to insert and publish in *The American Statesman*, printed in Lexington; *The Western Courier*, printed in Louisville; *The Bardstown Repository*, published in Bardstown; and *The Telegraph*, printed in Georgetown, (all in this state) any and all advertisements which are required and authorised by law to be published in any newspaper in the state of Kentucky; and the editors of said papers shall be governed by the same rules and entitled to the same fees as other printers in this commonwealth: *Provided*, that nothing herein contained shall be so construed as to authorise the insertion in the said papers of such advertisements as are required by law to be published in the paper of the public printer.

#### CHAPTER CCXCIX.

*An ACT respecting County Courts.*

Approved January 1, 1812.

Sec. 1. *BE it enacted by the general assembly,* That each county court of this commonwealth, may, at the time of laying their levies, provide for the purchase of one sett of *Littell's Laws of Kentucky*, for the use of such court.

Sec. 2. *Be it further enacted,* That it shall be the duty of the clerks of the different county courts, to safely keep said books, and bring them into court at each term.



## CHAPTER CCC.

1811.

*An ACT for the relief of William Stiggall.*

Approved January 1, 1812.

He was proprietor of a removed certificate, but had not laid it on the land where he had settled and made valuable improvements, until the legal time for so doing had expired. This act authorized him still to do it.

## CHAPTER CCCI.

*An ACT for the benefit of Edward Graham.*

Approved January 1, 1812.

He had paid for 200 acres of land, and could obtain only 150 acres. This act directed a patent to issue for that quantity, and the overpayment to be reimbursed.

## CHAPTER CCCII.

*An ACT authorising and confirming the erection of certain Market-Houses.*

Approved January 1, 1812.

The market-houses were in Madison and Logan counties.

## CHAPTER CCCIII.

*An ACT for the benefit of Andrew Parks.*

Approved January 1, 1812.

In consideration of his being old, indigent and infirm, and of his having spent the youth and vigor of his life in the military service of his country, this act remitted to him the state price for 200 acres of third rate land!

## CHAPTER CCCIV.

*An ACT to alter the time of holding the Chancery Term in the Circuit of Montgomery.*

Approved January 1, 1812.

Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky, That the chancery term for the circuit of Montgomery shall be holden on the fourth Monday in February in each year, and shall continue twelve judicial days, unless the business of said court shall be sooner completed: *Provided however*, that the county court may sit as heretofore, any thing in this act to the contrary notwithstanding.

Sec. 2. Be it further enacted, That all process made returnable to the January term heretofore allowed, shall

1811. be considered as returnable to the said February term. And so much of any act as comes within the purview of this act, shall be and the same is hereby repealed.

### CHAPTER CCCV.

*An ACT to amend the act authorising a Lottery for the improvement of the Navigation of the Kentucky River.*

Approved January 7, 1812.

The acts alluded to are Chaps. 214 and 256, of this Volume.

Preamble.

WHEREAS the commissioners appointed by the act authorising a lottery for the improvement of the Kentucky river, failed to meet at the time they were authorised so to do: wherefore, for remedy whereof,

Commissioners appointed to carry the act into effect.

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That the following persons, to wit: Green Clay, John Jackson, Robert Burnside, William N. Lane, Jephthah Dudley, Stephen Trigg, Samuel M'Coun, Charles Wilkins, Lewis Sanders, John Hanna and Beverly Broadus, be and they are hereby appointed commissioners to carry into effect the above recited act; who, or a majority of them are hereby authorised to meet in the town of Lexington, at the Kentucky Hotel, on the fourth Monday in May next, or as soon thereafter as can be, and then and there make such orders and regulations as may be necessary, and appoint their future meetings at such time and place as a majority of them may deem expedient.

Their powers and authority.

Time given to complete the drawing of the lottery.

Compensation to comm'rs.

Proviso.

Sec. 2. That the farther time of three years from the passage of this act, is hereby given for completing the drawing of said lottery; and the said commissioners shall be entitled to two dollars per day for every day they may necessarily be engaged in attending to the arrangements of said lottery, and completing the improvements contemplated in said above recited act: *Provided*, the said expenses does not exceed five hundred dollars, to be drawn out of the clear proceeds of said lottery.

Commissioners to be liable in a certain event for certain monies.

Sec. 3. *Be it further enacted*, That each commissioner shall be liable for the amount of money which he shall sell tickets for, in case said lottery is not drawn within the time limited by this act, or if drawn, for the amount of tickets which he shall have actually sold, and no more.

## CHAPTER CCCVI.

1811.

*An ACT for the relief of Shemi Watson and James M'Coun.*

Approved January 6, 1812.

This act remitted to them respectively what remained due on their head-right claims.

## CHAPTER CCCVII.

*An ACT concerning the Kentucky Seminary.*

Approved January 6, 1812.

WHEREAS it is represented to the present general Preamble, assembly, that the clerk to the board of trustees of the Kentucky seminary is dead, and that the records and papers respecting the proceedings of the said board, cannot be found among the papers of the said deceased clerk; in consequence whereof, it is not ascertainable who are the trustees of the said seminary: for remedy whereof,

BE it enacted by the general assembly of the commonwealth of Kentucky, That John Brown, Daniel Weisiger, William Hunter, Achilles Sneed, James Blair, William Trigg and Christopher Greenup, and their successors, be appointed trustees to the said seminary; who shall be and are hereby appointed a body politic Their powers and authority. and corporate, by the name, style and designation of the Trustees of the Kentucky Seminary, and shall have full power and authority to do and perform such duties and such acts as the laws now in force respecting the said seminary will and do warrant and authorise; and that they may also sue and be sued, plead and be impleaded, either at law or equity; and who shall also be subject to such rules and regulations as are directed by the laws now in force respecting the said seminary.

## CHAPTER CCCVIII.

*An ACT for the regulation of certain Towns in this Commonwealth.*

Approved January 6, 1812.

WHEREAS it is represented to the present general assembly, that there has been no special law passed heretofore for the regulation of the town of Greenville, Names of the towns. in Muhlenburg county; the town of Henderson, in

1811. Henderson county; Bowling-Green, in Warren county; Eddyville, in Caldwell county; Barboursville, in Knox county; Madisonville, in Hopkins county; Burkesville, in Cumberland county; Morganfield, in Union county; and Summersett, in Pulaski county; and that it is necessary some special law be passed for that purpose,

Who to vote  
for trustees.

When.

No. of trustees.

By-laws.

May impose a  
tax.

How appropri-  
ated.

To appoint a  
clerk.

Impose fines.

How recovered

Qualifications  
of trustees and  
voters.

Further quali-  
fications.

Sec. 1. *Be it therefore enacted by the general assembly of the commonwealth of Kentucky*, That the free male inhabitants of the said towns respectively, who shall possess the qualifications herein after mentioned, are hereby authorised and required to meet at the courthouse in said towns, on the first Saturday of May 1812, and on the same day in every year thereafter, and shall elect five trustees for said towns; which said trustees so elected, or a majority thereof, shall be sufficient to form a board, and shall be authorised to make any by-laws for the government and regulation of said towns, as to them may seem right, not inconsistent with the constitution and laws of this commonwealth.

Sec. 2. *Be it further enacted*, That the said trustees, or a majority of them, shall have full power and authority to impose a tax annually on the persons and property, both real and personal, within the limits of said towns, not exceeding sixty dollars per year, as to them shall seem right, for the purpose of keeping in repair the public streets, springs, &c. of said towns; or for any other purposes which the said trustees, or a majority of them, shall think proper for the benefit of said towns.

Sec. 3. *Be it further enacted*, That the said trustees shall appoint their clerks, and any other officers they may think proper; and the said trustees shall have full power, or a majority of them, to inflict a fine, not exceeding ten dollars, for every breach of their by-laws; to be sued for and recovered in their name before any justice of the peace, and applied to the use of said towns.

Sec. 4. *Be it further enacted*, That no person shall be elected a trustee of said towns, or qualified to act as such, unless he reside within the limits of said towns, and be above the age of twenty-one years.

Sec. 5. *Be it further enacted*, That no person shall be qualified to vote at the general election for trustees for said towns, unless they reside in said towns, or own real property therein, and be above the age of eighteen years.

Sec. 6. *Be it further enacted*, That the board of trustees for said towns may at any time they may think proper, appoint some fit person, who shall reside in said towns, as a commissioner, for the purpose of obtaining, in such manner as the board may think proper, a list of all such persons and property as may be subject to taxation by this act in said towns; whose duty it shall be to proceed to obtain such list, and shall return the same to the said board, in such time and in such manner as the said board shall direct; for the purpose of enabling said trustees to apportion the tax on said towns. The said commissioner shall be allowed such sum per day as the trustees may deem right, to be paid out of the money to be collected as taxes.

1811.

Commissioners  
of tax,

Their duty.

Pay.

Sec. 7. *Be it further enacted*, That after the said trustees have laid and apportioned the taxes under this act, they shall appoint a collector thereof, whose duty it shall be to collect and account for the same to the trustees within two months after he shall have been furnished with a list of said taxes. And if any person shall fail or refuse to pay the same, the said collector shall make distress and sale of property, in the same manner as collectors of revenue are directed to do; and the said collector shall pay the money so collected to the trustees of said towns; and the said collector shall be allowed six per centum on all monies which he shall have to distrain for, and such compensation for the collection of other taxes, as the said trustees may think proper, to be paid out of said taxes.

Collectors of  
tax.

Duty.

Delinquents,  
how proceeded  
against.

Collector's pay

Sec. 8. *Be it further enacted*, That the collector shall give bond with security to the said trustees for the due performance of his office, and shall also take the following oath, to wit: "I do solemnly swear, or affirm, (as the case may be) that I will faithfully and truly collect all taxes put into my hands for collection by the trustees for the town of which I am appointed collector, within my power, and will pay all money so collected to said trustees according to law; so help me God." Which said oath either of the trustees are authorised to administer.

Collector to  
give bond.

Take an oath

By whom ad-  
ministered.

Sec. 9. *Be it further enacted*, That in case the said collector shall fail to pay the money collected by him to the trustees as aforesaid, they may, upon giving him ten days previous notice in writing, recover judgment a-

Delinquent col-  
lectors how pro-  
ceeded against.

1811.

Vacancies in  
the board, how  
filled.

gainst the said collector and his security, in the county court; ten days notice being first given of said motion.

Sec. 10. *Be it further enacted,* That in case a vacancy shall happen in the said board of trustees, by death, resignation or otherwise, between the general election for trustees for said towns, the remaining trustees, or a majority of them, shall meet at the court-house in said towns, as soon as convenient, and supply such vacancy; which said trustee or trustees so appointed, shall possess the same power and qualification as those elected at the general election, and shall continue in office until the next general election for trustees, and no longer.

Trustees, when  
to meet.

Sec. 11. *Be it further enacted,* That the said trustees, after they are elected, shall meet at the court-house in said towns on the first Saturday in February, May, August and November, annually, and at such other times as they may think proper in every year, as the internal policy of said towns may require. And the trustees elected in pursuance of this act, shall continue for and during the term of one year from the time of their election.

Continuance in  
office.

Allowance to  
clerk.

Sec. 12. *Be it further enacted,* That the said trustees, at some one of their meetings in every year, shall make such allowance to their clerk as they may think proper, to be paid out of any money collected in pursuance of this act.

Clerk to take  
an oath.

Sec. 13. *Be it further enacted,* That the said clerks shall take an oath before they enter upon the duties of their office, to carefully keep and preserve the books and all papers confided to them by said trustees, and to make true and correct entries of all by-laws passed by said trustees; which said oath shall be administered by the president of the board.

Oath of trustees

Sec. 14. *Be it further enacted,* That the said trustees shall severally take an oath before they enter upon the duties of their office, well and truly to perform the duties enjoined upon them as trustees; which said oath shall be administered to them by some justice of the peace, and recorded by the clerks of said trustees.

By whom ad-  
ministered.

Penalty on trust-  
ees failing to  
attend.

Sec. 15. *Be it further enacted,* That every trustee who shall fail to attend said meetings, without a reasonable excuse, shall forfeit and pay for every failure two dollars, to be applied to the use of said towns; which said excuse shall be adjudged of by the remainder of the

trustees, or a majority of them ; and in case a fine should be imposed, and the said trustees shall fail or refuse to pay it to the collectors when demanded, it shall and may be lawful for the remaining trustees to sue for and recover the same before a justice of the peace. 1811.

Sec. 16. *Be it further enacted*, That the first election shall be held by some two justices of the peace of the town or county ; which said justices shall be nominated by the county court ; and every other general election shall be held in like manner. How recovered  
First elections,  
by whom to be  
held.

Sec. 17. *And be it further enacted*, That in case the said qualified voters or justices shall fail to meet as aforesaid, after the first general election, the former trustees shall continue in office until the next general election to be held for trustees. In what case  
former trustees  
to continue in  
office.

#### CHAPTER CCCIX.

##### *An ACT for the relief of David Meek.*

Approved January 13, 1812.

This act remitted to him the instalments then due and to become due on his head-right land ; he being poor, and being a cripple, and having been so from his infancy.

#### CHAPTER CCCX.

##### *An ACT for the relief of Charles Blakely.*

Approved January 13, 1812.

He was an object of charity, owing to his indigence and decrepitude ; in consideration of which, this act remitted to him the state price of his head-right land.

#### CHAPTER CCCXI.

##### *An ACT for the relief of Thomas Randolph and Robert Porter.*

Approved January 13, 1812.

Randolph had lost his head-right land, by a prior claim, after having paid the state price, but could obtain no warrant, owing to there having been no credit given him in the auditor's or treasurer's office : this act authorized a warrant to issue in his favor. Porter had been sheriff of Madison county, and having failed to return his delinquent list in time, had paid the amount thereof into the treasury : this act permitted him to receive it again.

1811.

## CHAPTER CCCXII.

*An ACT to amend the act entitled "an act to incorporate the Frankfort Bridge Company."*

Approved January 18, 1812.

The act amended is Chap. 145 of this Volume.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That the 16th section of the act entitled "an act to incorporate the Frankfort bridge company," approved January the 25th 1810, be and the same is hereby repealed; and the said bridge company be allowed until the 1st day of February 1816, to erect and complete the said bridge.

Sec. 2. *And be it further enacted,* That if the said bridge shall not be completed by the said first day of February 1816, or if it should at any time thereafter remain for two years together so much out of repair as to be unsafe for traveling, then and in that case all the privileges and immunities by this act granted to the said company, shall cease, determine and become forfeited.

## CHAPTER CCCXIII.

*An ACT allowing an additional Term to the Harrison Circuit Court for the trial of Chancery Causes.*

Approved January 18, 1812.

When to commence. Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That the circuit court of Harrison may and shall hold an additional term, to commence on the second Monday in March in every year, and continue twelve juridical days, unless the business shall be sooner completed.

Jurisdiction. Sec. 2. *Be it further enacted,* That no grand jury shall be summoned at the said March term, nor shall pleas of the commonwealth, or any action or motion at common law whatever, be tried; but the said term shall be and is hereby exclusively appropriated to the trial of cases and matters in chancery.

Effect of their proceedings. Sec. 3. *Be it further enacted,* That all decrees and orders, whether interlocutory or final, made at the said March term, shall be as valid as if made at the other terms of said court; and that all process in chancery, which may now be sued out and made returnable to any term of said court, or any day of such term, may be



sued out and made returnable to the said March term, 1811.  
or any day thereof.

Sec. 4. *Be it further enacted*, That nothing in this act shall be construed to prevent the trial of any cause in chancery, at any of the ordinary terms of said court; but that the same may be taken up and tried at any of said terms, as if this act had not passed.

Jurisdiction of  
ordinary terms  
retained.

#### CHAPTER CCCXIV.

*An ACT for the benefit of William F. Simrall's heirs.*

Approved January 18, 1812.

They were infants, and held by inheritance an undivided moiety of a tract of land, and an unfinished paper-mill on Beargrafs. This act appointed commissioners to sell it for the benefit of the estate.

#### CHAPTER CCCXV.

*An ACT to authorise the Town of Paris to erect a Market-House on the Public Square in said Town.*

Approved January 18, 1812.

#### CHAPTER CCCXVI.

*An ACT for the benefit of George Anderson and Lewis Sanders.*

Approved January 18, 1812.

They had purchased an estate which it was supposed had escheated to the commonwealth. This act released the commonwealth's right, if any existed.

#### CHAPTER CCCXVII.

*An ACT for the benefit of John Poague.*

Approved January 22, 1812.

This act authorised him to locate any quantity of land not exceeding 1000 acres, including his improvement on the south side of Cumberland river; 20 dollars per 100 acres was the price, and six years the time of payment. He had discovered salt water on the tract, and his right was to depend on his work, giving it to the extent the quantity and quality of the water would justify.

#### CHAPTER CCCXVIII.

*An ACT for the relief of William Pearl and William Smith.*

Approved January 22, 1812.

They had discovered salt water on a tract of land which they owned in Knox county, and were desirous of appropriating more land contiguous thereto. This act authorised them to locate any quantity not exceeding 1000 acres, price 20 dollars per 100 acres, time of payment four years. The same conditions imposed as in the preceding act.

1811.

## CHAPTER CCCXIX.

*An ACT to alter the Terms of certain Circuit and County Courts.*

Approved January 22, 1812.

- Lincoln.** Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That the circuit court of Lincoln circuit shall commence on the second Mondays in February and May, and the third Monday in August, annually; and the county courts for Lincoln county shall commence on the second Mondays in every month wherein no circuit court is directed to be holden.
- Rockcastle.** Sec. 2. *Be it further enacted,* That the circuit court of Rockcastle circuit shall commence on the Thursdays preceding the first Mondays in April, July and October, annually.
- Casey.** Sec. 3. *Be it further enacted,* That the circuit court of Casey shall commence on the fourth Mondays in May, August and November, annually; and county courts in said county of Casey shall commence on the fourth Mondays in each other month.
- County court of Rockcastle and Garrard.** Sec. 4. *Be it further enacted.* That the county court of Rockcastle shall commence on the fourth Mondays in each month annually; and the county court of Garrard shall commence on the third Mondays in each month, whenever no circuit court is directed to be holden.
- To commence.** Sec. 5. *Be it further enacted,* That the first section of this act is not to be in force until the first day of May next.
- Livingston.** Sec. 6. *Be it further enacted,* That the circuit court of Livingston county shall commence on the third Monday in the months of March, June and September.
- Caldwell.** The circuit court of Caldwell county, on the fourth Mondays in the months of March, June and September.
- Christian.** The circuit court of Christian county, on the first Mondays in the months of April, July and October; and sit two weeks in the said county of Christian, if the business require it.
- Regulations respecting process.** Sec. 7. *Be it further enacted,* That all writs or other process, made returnable to any court, the time of holding which is hereby changed, and all recognizances taken returnable to any such court, shall be considered as returnable to the court as is hereby directed to be hold-

den; and the same shall be acted on by said court, and considered as binding and valid as though this act had not passed. 1811.

Sec. 8. *Be it further enacted*, That the term of the county court of Pulaski, held in the month of November, shall in future commence on the third Monday of said month. Pulaski.

Sec. 9. *Be it further enacted*, That from and after the Bath last day of February, the county court for the county of Bath, shall commence on the second Monday in every month, except in those months in which the circuit courts are held.

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CHAPTER CCCXX.

*An ACT erecting Election Precincts in certain Counties.*

Approved January 22, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That all that part of Livingston county, included in the following bounds, to wit: Beginning at the mouth of Hurricane creek, and up the same to its head; thence a direct course to the main road at major Cofield's; thence with said road to Centreville; thence with the Caldwell county line to Tradewater, and down the same to the mouth; thence down the Ohio to the beginning, shall be and the same is hereby erected into an election precinct in the said county of Livingston; and that the qualified voters in said precinct shall meet at the house of William Powell, in said precinct, for the purpose of voting. Livingston.

Sec. 2. *Be it further enacted*, That all that part of Caldwell county, included in the following bounds, to wit: Beginning at Cumberland river, opposite the mouth of Eddy creek; thence a straight line to the upper end of the seven mile island in Tennessee river; thence to include all that part of Caldwell county, lying between the Cumberland and Tennessee rivers, and east of the line aforesaid; shall be and the same is hereby erected into an election precinct in the said county of Caldwell, and that the elections in said precinct shall be held at the house of Samuel Duncan. Caldwell.

Sec. 3. *Be it further enacted*, That all that part of the county of Breckenridge, included in the following bounds, to wit: Beginning at the mouth of Lead creek; Breckenridge.

1811.

thence with the line of May, Banister & Co. to the house of Joseph Wright, and so as to include the same on Blackford's creek; thence down the same to the Ohio river, and up the same to the beginning; shall be and the same is hereby erected into an election precinct in the said county of Breckenridge; and that the qualified voters in the said precinct shall meet at the house of Benjamin Bline, within the said bounds, for the purpose of voting in all legal elections.

Hopkins.

Sec. 4. *Be it further enacted*, That all that part of Hopkins county, included in the following bounds, to wit: Beginning where the road leading from the town of Henderson, and passing the residence of Simon Sugg to Christian court-house, crosses the line dividing Henderson and Hopkins counties; thence with the said road to the house of Joseph Davis; thence with the road leading towards Eddyville, as far as Tradewater river, and down the same to the line of Union county, and with it to the line of Henderson county, and with that line to the beginning; shall be and the same is hereby constituted an election precinct in the said county of Hopkins; and that the qualified voters within the said bounds shall meet at the house of major William Stewart, for the purpose of voting in all their legal elections.

Cumberland.

Sec. 5. *Be it further enacted*, That all that part of Cumberland county, included in the following bounds, to wit: Beginning on the summit of the dividing ridge between Kettle and Sulphur creeks, at the state line; thence with the ridge so far as to intersect with the dividing ridge between Galloway's and Judio's creeks, and to strike Cumberland river at Taylor's ferry; thence down the river to the mouth of Mud Camp creek; thence up the same to the forks; thence up the north-west fork of said creek (including the settlements thereon) to the head; thence to continue the general course of said creek to the county line; thence with the same westwardly, and round to the beginning; shall be and the same is hereby erected into an election precinct in said county of Cumberland; and that the qualified voters within the same shall meet at the house of Hezekiah Jackson, for the purpose of voting at their several elections in said precinct.

Christian.

Sec. 6. *Be it further enacted*, That all that part of Christian county, included within the following bounds,

to wit: Beginning at John Wilking's, on the Muhlenburg line; thence a straight line to Samuel Ellison's; thence a straight line to Benjamin Lacey's; thence to Joseph Meacham's; thence a straight line to James Fruit's; thence a due west course to the Barren fork of Tradewater; thence down the same to the Hopkins county line; thence with said line to the Muhlenburg county line; thence with said line to the beginning; shall be an election precinct, and called and known by the name of the northern precinct; and the elections shall be held in said precinct at the house of James Thompson.

1811.

Sec. 7. *Be it further enacted*, That the county courts of Livingston, Caldwell, Breckenridge, Hopkins, Cumberland, Washington, Greenup and Christian counties, shall, at the time they appoint a clerk and judges to preside at the elections to be held at their respective court-houses, to be held in said counties, also to appoint clerks and judges to preside at the elections to be held in the precincts in their respective counties; and it shall be the duty of the sheriffs of the counties aforesaid, to attend by themselves or their deputies, and conduct the elections to be held in the precincts in their several counties; which elections shall be governed by the same rules and regulations as are now prescribed by law.

Duty of courts and sheriffs.

Sec. 8. *Be it further enacted*, That the sheriffs who preside at the elections held in the several precincts in the counties of Livingston, Caldwell, Breckenridge, Hopkins, Cumberland, Washington, Greenup and Christian, shall meet the sheriffs who preside at the elections held at their respective court-houses in said counties, on the first Saturday succeeding the close of said elections, at the respective court-houses in said counties, and compare the polls and make return agreeable to the constitution and laws of this state.

When &amp; where polls to be compared.

Sec. 9. *Be it further enacted*, That all that part of the county of Washington, included within the following bounds, to wit: Beginning at the north-east corner of Green county, and running north with the line of Casey county, to Mercer county line, and with said line to the dividing ridge between the Rolling fork and Chaplin forks of Salt river; thence with said ridge westwardly to where it intersects the Green river road, and with said road to Muldrough's hill, to where it intersects the

Washington.

1811.

Green county line, and with said line to the beginning; shall be and the same is hereby erected into an election precinct in the said county of Washington; and that the qualified voters in said precinct shall meet at the house of Robert Burnet.

Greenup.

Sec. 10. *And be it further enacted*, That all that part of the county of Greenup, within the following boundary, to wit: Beginning at the mouth of Great Sandy, running with the state road to the crossing of the east fork of Little Sandy; thence up said fork to its source; thence a direct course to intersect the Floyd line; thence with said line to where it intersects the Virginia line; thence to the beginning; shall be an election precinct in the said county of Greenup, and the election shall be held at the house of Nimrod Canterbury.

## CHAPTER CCCXXI.

*An ACT for the relief of Caleb Hall and William Irvan.*

Approved January 22, 1812.

Hall had obtained a quietus on a wrong certificate of his right land: this act directed the auditor to take it back and issue one of the right certificate. Irvan had paid the state price for 110 acres of land, but owing to some irregularity, could not obtain a patent: this act directed a patent to issue.

## CHAPTER CCCXXII.

*An ACT for the benefit of the Estate of William Chapline, deceased.*

Approved January 24, 1812.

He had been clerk of Warren county and circuit courts, and had died without charging his fees for services performed the year preceding his death. This act authorized the present clerk to do it, and make out fee-bills for the benefit of the estate.

## CHAPTER CCCXXIII.

*An ACT for the benefit of William and Lapsley M'Bride.*

Approved January 24, 1812.

Their ancestor had been appointed commissioner by the county court of Kentucky, under an act of 1779, to open a road from Holstein to the Crab Orchard, and had been killed in the battle of the Blue Licks, having never received any compensation. This act authorized the issuing of four warrants, for the quantity, collectively, of 2800 acres of land to his sons.

## CHAPTER CCCXXIV.

1811.

*An ACT concerning Middletown and Versailles.*

Approved January 24, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That it shall and may be lawful for the persons having the qualifications prescribed by law, to vote for trustees for Middletown, in Jefferson county, to elect and choose, on the first Monday in February next, five trustees; who shall have all the authority and powers vested in the trustees of said town by law; and shall also be subject to all the provisions and penalties prescribed by law; which trustees, when elected, shall continue in office until the Saturday preceding the first Monday in August next.

Sec. 2. *Be it further enacted*, That the election for trustees for the town of Versailles, shall hereafter be held on the first Saturday in May in every year; and the said trustees shall have power to raise, by a tax on the property in said town, any sum not exceeding two hundred dollars, in any manner they may think most equitable.

## CHAPTER CCCXXV.

*An ACT concerning the Navigation of the South Fork of Licking.*

Approved January 24, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the same indulgence be and is hereby extended to those who may hereafter build mill-dams on the South and Stoner's forks of Licking, to erect locks and slopes in their dams, as is given to owners and occupiers of mills that have been heretofore built on said streams, by an act entitled "an act concerning mill-dams on the South and Stoner's forks of Licking," approved December 17th 1806.

Sec. 2. *Be it further enacted*, That the act passed at the last session, approved January 18th 1811, entitled "an act concerning the navigation of the South fork of Licking," be and the same is hereby repealed.

1811.

## CHAPTER CCCXXVI.

*An ACT allowing an additional number of Justices of the Peace in certain Counties in this Commonwealth.*

Approved January 24, 1812.

*BE it enacted by the general assembly of the commonwealth of Kentucky,* That the county of Floyd shall be entitled to two justices of the peace; and the counties of Shelby, Butler, Adair, Clay and Jessamine, one justice of the peace each; the county of Christian two justices of the peace; the county of Breckenridge, one, who shall reside in the town of Hardinsburg; the county of Harrison shall be entitled to one justice of the peace, who shall reside in the town of Cynthiana; the county of Clarke, two, one of whom shall reside in the town of Winchester; and the county of Shelby, one other justice of the peace, who shall reside in the town of Shelbyville, in addition to the number now allowed by law.

## CHAPTER CCCXXVII.

*An ACT concerning Bills of Exchange.*

Approved January 24, 1812.

*BE it enacted by the general assembly of the commonwealth of Kentucky,* That all instruments of writing to which by law the signature and seal of the notary public of any state, city, town or corporation are required, when thus signed and sealed, shall be received as evidence, together with the certificate of the notary public, without any other or further authentication, in any matter of controversy, either in law or chancery, in any of the courts in this commonwealth.

## CHAPTER CCCXXVIII.

*An ACT for the benefit of Mary Burke and others.*

Approved January 24, 1812.

This act authorised Mary Burke to locate and receive a patent, gratis, for 100 acres of land in Nelson county; Francis Cunningham to locate and pay for 50 acres in Mercer county; and remitted to the heirs of James Dillard the balance of the state price due on 200 acres of land in Livingston county.



## CHAPTER CCCXXIX.

1811.

*An ACT to alter the time of holding the Jefferson Circuit Court.*

Approved January 24, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That hereafter the circuit courts for the county of Jefferson shall be holden on the third Monday in the month of April, and second Monday in July and November in each year; and shall continue at each term eighteen juridical days, if necessary; and the additional term heretofore allowed to the said circuit court, for the dispatch of chancery business, shall commence on the first Monday in February in each year, and continue twenty-four juridical days, if necessary.

Sec. 2. *Be it further enacted,* That all writs, recognizances, and process of every description, which have been or shall be sued out or entered into before the April term of said court, returnable to the February term, as heretofore required by law, shall be returnable and returned to the said April term; and all notices and motions to the said February term, shall be acted on at the said April term. And there shall be no discontinuance of any suit, writ, process or motion depending or to be made or issued in the said courts, or either of them, by reason of the changes made by this act in the times of holding said courts. And the county courts of said county shall commence on the second Monday in every month, except those in which the circuit courts are directed to be held.

Sec. 3. *Be it further enacted,* That the said circuit court of Jefferson, at their chancery term in February, shall and may do and transact any common law business which does not require the intervention of a jury.

All acts and parts of acts contrary to the provisions of this act, shall be and the same are hereby repealed.

## CHAPTER CCCXXX.

*An ACT further to regulate the payment of the debt due the Commonwealth for the sale of vacant Lands.*

Approved January 27, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That the sales of land direct- Sale suspended.

1811.

Sale to be made  
after a given  
period.

ted to be made by the register of the land-office, under the act of assembly approved January the 28th 1811, entitled "an act further to regulate the payment of the debt due this commonwealth for the sale of her vacant lands," shall be and the same is hereby suspended until the first Monday in June 1813; and the auditor and register shall respectively proceed to perform the duties required under the before recited act, on the said first Monday in June 1813.

When next in-  
stalment paya-  
ble.

Sec. 2. That the instalments which by the existing laws would become due on the first Monday in June next, shall be payable on the first Monday in June 1813; and each instalment shall be payable annually, on or before the first Monday in June in each year thereafter, until the whole is paid: *Provided however*, that interest at the rate of six per centum per annum be calculated upon so much of the several instalments as is composed of principal, as they would have become due if this act had never passed.

Interest to be  
calculated.

Sec. 3. That where any tract of head-right land shall have been stricken off to the state at the sales heretofore made, the owner or owners of the said claim shall have the privilege of redeeming the same, on or before the first Monday in June 1813, by paying into the treasury the instalment and interest for which the said claim was sold, together with an interest at the rate of twenty-five per centum per annum, from the day of sale to the day of redemption, and costs of sale.

When lands  
stricken off to  
the state may  
be redeemed.

Terms of re-  
demption.

Sec. 4. That every person indebted to the state for any lands acquired under any law of this commonwealth, as well where the land has been sold to the state, as where no sales have been made, who shall pay into the public treasury, within twelve months after the passage of this act, the whole amount of the state price, or the balance, in case of a partial payment already made, shall be entitled to a discount of the interest due or to become due.

For what inte-  
rest may be dis-  
counted.

Provision, in  
which a distinc-  
tion is made  
between claims  
upon settlement  
and those with-  
out such settle-  
ment.

Sec. 5. *Provided always*, and it is hereby expressly declared, that no claim founded on or derived under or by virtue of any county court certificate, as an additional, original or removed claim, upon which there is no actual settlement and residence at the passage of this act, made by the owner of such certificate, or some person claiming under him or her, the owner or owners thereof,

taking, using or falling under the indulgencies, or either of them, for payment, deduction of interest, or redemption herein granted, shall, after the owner so takes, uses or by failure to pay falls under the said indulgencies, or either of them, have any efficacy, priority or virtue in law or in equity, in any conflict or contest with any other adverse claim, located, entered or surveyed by virtue or colour of any warrant, certificate or entry whatever, where such adverse claimant, or any one occupying under him, is actually seated on the land at the passage of this act; or where such adverse claimants shall hold by virtue of any military treasury warrant and settlement and pre-emption claim, derived under the laws of Virginia or this commonwealth.

1811.

Respecting  
claims derived  
under the laws  
of Virginia.

Sec. 6. *Provided however,* That nothing in the preceding section shall be construed to impair or affect the rights of persons claiming under certificates founded upon a previous actual settlement made in good faith; nor to impair or affect the rights of persons holding under an additional claim, founded on an original certificate for land, upon which an actual settlement and occupancy had been made by any claimant under such original certificate, at any time before the additional certificate was granted; of which settlement, however, the certificate or certificates of the commissioners or county court shall not be evidence.

Respecting  
the construction  
of the preceding  
section.

Certificates of  
commissioners  
or courts, not to  
be evidence.

Sec. 7. That where any person shall be actually settled, at the passage of this act, upon a tract of land, claiming the same by location or survey, less than 400 acres; claiming also a quantity adjoining, not exceeding 400 acres; such settler shall be entitled to the benefit of the fifth section of this act, as to such adjacent claim, not exceeding 400 acres.

Certain claim-  
ants entitled to  
the benefit of  
the 5th section.

Sec. 8. And where any person is actually settled, at the passage of this act, upon a tract of land of 400 acres, or any smaller quantity, claiming by entry or location, not sufficiently descriptive of the land intended to be appropriated, and not reduced to certainty by actual survey, such settler shall nevertheless be entitled to the protection contemplated in the 5th section of this act, for his quantity of land, not exceeding 400 acres, when laid off as nearly in a square, with the lines to the cardinal points and the dwelling seat at the intersection of the diagonals, as prior actual settlements and military claims will permit.

Certain actual  
settlers protect-  
ed.

1811. *Duty of auditor* Sec. 9. The auditor of public accounts shall keep an account and record of the sums paid on any tract of land, and of the time of payment; and a certificate from the said department, signed by the auditor, shall be evidence of the sums paid, the time of payment, deduction of interest, or of a failure to pay within the time prescribed by law, as the case may be.

*Duty of auditor and register.* Sec. 10. That where any person obtains a quietus for the price due the commonwealth upon any tract of land, by taking the benefit of this act, either as to the extension of the time of payment, or for redemption, or for reduction of interest, the auditor shall recite it in the quietus, and the register of the land-office shall recite the same in the grant:

#### CHAPTER CCCXXXI.

*An ACT for the relief of John Holder's heirs and others.*

Approved January 27, 1812.

The persons relieved by this act were the heirs of the security of an insolvent sheriff of Clarke, and the securities of an insolvent sheriff of Bourbon. The relief given was a remission of the damages and interest, and an acceptance, on the part of the state, of the principal debt.

#### CHAPTER CCCXXXII.

*An ACT for the relief of Isaac Rayfield.*

Approved January 28, 1812.

He was indigent and a cripple; he had settled on 50 acres of land, and had paid part of the state price: this act released him from the balance.

#### CHAPTER CCCXXXIII.

*An ACT for the benefit of Thomas Townsend.*

Approved January 28, 1812.

He had settled on some vacant land in Madison county. This act authorized him to locate 150 acres, by boundaries given in the act; price 20 dollars per 100 acres, time of payment one year.

#### CHAPTER CCCXXXIV.

*An ACT repealing the act keeping open the Navigation of Little River, in Christian County.*

Approved January 28, 1812.

BE it enacted by the general assembly of the commonwealth of Kentucky, That the act approved January

4th 1811, for keeping open the navigation of Little river, in Christian county, be and the same is hereby repealed.

1811.

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CHAPTER CCCXXXV.

*An ACT for the relief of certain Sheriffs.*

Approved January 28, 1812.

The provisions of this act related to the revenue, were all personal, and have had their effect.

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CHAPTER CCCXXXVI.

*An ACT respecting Depositions.*

Approved January 28, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That in all suits at common law and chancery, one justice of the peace shall have full power and authority to take any deposition or depositions to be read as evidence in any such suit or suits within this commonwealth.

Sec. 2. *Be it further enacted,* That a *dedimus potestatem*, issuing from the court authorising the taking of such deposition or depositions, shall not be necessary; but all justices of the peace of this commonwealth, in virtue of their office, are hereby invested with complete and full power and authority to take such deposition or depositions, any law or usage to the contrary notwithstanding.

Sec. 3. *And be it further enacted,* That if any person or persons shall give a notice to take a deposition or depositions, and shall fail to take or cause the same to be taken, the party notified, if attending agreeably to the notice, shall be entitled to receive six cents for every mile that he shall necessarily travel in going to and returning from the place assigned to take the deposition or depositions, to be allowed by the court where the suit is depending; and for which execution may issue according to law: *Provided,* that the provisions in this section shall not be extended to any case where the failure to take the deposition or depositions arises from the non-attendance of the witness or witnesses, or any unavoidable cause. And the oath of the party giving the notice, shall be admissible, to enable such party to obtain the benefit of this proviso.

1811.

## CHAPTER CCCXXXVII.

*An ACT concerning the Navigation of Green and Mud Rivers.*

Approved January 28, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That so much of any act or acts in force in this commonwealth, as provides for the opening of Green river between the mouth of Knob Lick creek and the Adair county line, be and the same is hereby repealed.

Sec. 2. *Be it further enacted by the authority aforesaid,* That the second section of an act of the general assembly, approved January the 18th 1810, entitled "an act to keep open and improve the navigation of certain water courses," be and the same is hereby repealed.

Sec. 3. *Be it further enacted,* That Thomas Stubblefield and Nimrod Long, be and they are hereby appointed commissioners, in addition to those already appointed by an act approved January the 18th 1810, to open and keep in repair the navigation of Mud river; and to be clothed with the same powers, and be under the same restrictions as those already appointed by the above recited act.

## CHAPTER CCCXXXVIII.

*An ACT concerning Executors and Administrators.*

Approved January 28, 1812.

Preamble.

WHEREAS inconveniences frequently occur to suitors in our courts of justice, from the necessity of executors and administrators, who are non residents, being compelled to qualify as such, and give bond in this commonwealth, previous to the commencement or prosecution of any claim in right of their testator or intestate: for remedy whereof,

Ex'rs or adm'rs  
who are non-  
residents, may  
maintain or  
commence suits  
without taking  
the oath requi-  
red by law.

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky,* That any such executor or executors, administrator or administrators, who reside beyond the jurisdiction of this state, may commence, or prosecute any suit already commenced, either in law or equity, in right of their testator or intestate, without taking the oath and giving the bond required by the laws of this state: *Provided however,* that the said executor

Provido.

or executors, administrator or administrators, shall file with the clerk of the court wherein such right is recoverable, or suit commenced, an authenticated copy of the certificate of probate or order granting letters of administration of said estate, given in such residen<sup>t</sup> state: *And provided also*, that the recovery had by such executor or administrator, shall be considered as assets of their said testator or intestate; and before execution shall issue on such judgment, he or they shall give bond with approved security, before the county court aforesaid, as the law requires, duly to administer the same. *Provide.*

1811.

Sec. 2. *Be it further enacted*, That any executor or executors, administrator or administrators, commencing a suit, or being legally authorised to prosecute the same within the purview of the foregoing section, shall give bond with security for the payment of costs, as other non-residents suing in their own rights are compelled to do; and upon a failure of assets, shall be liable individually for costs of any such suit. *Shall give bond for costs as other non-residents.*

#### CHAPTER CCCXXXIX.

*An ACT to establish a Town in the County of Estill.*

Approved January 28, 1812.

WHEREAS it is represented to the present general assembly, that the justices of the county of Estill have erected the public buildings for the said county on the lands of Green Clay, and that the said Clay has conveyed to the said justices, twenty and one half acres of land, around and adjacent to said public buildings; and the said justices having petitioned the general assembly to establish a town thereon: *Preamble.*

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That the said twenty and one half acres of land, which was conveyed by the said Clay to the said justices, be vested in Stephen Tigg, Bennett Clark, John Okham, Jones Hoy and Jesse Cobb, as trustees for a town, to be known by the name of Irvine; that they, or a majority of them, proceed as soon as may be to lay off the same into suitable lots and streets, having respect to all improvements made in faith of any former plan of a town, and sell the lots on some court day to be held for said county, to the highest bidder, giving one month's previous notice of the *Certain lands vested in trustees for a town to be called Irvine. Their powers and duty.*

1811.

Provide.

Power of the  
trustees to con-  
vey lots.

day of sale. The said trustees shall sell the same on a credit of twelve months, and shall take bond for the payment of the purchase money, with approved security; which bonds shall be assigned by the said trustees to the said Clay, for his use: *Provided*, that no payments of money or assignments of bonds shall be made to the said Green Clay, by the trustees for the sale of lots in said town, until the said Clay shall have first entered into bond with sufficient security in the county court of Estill, conditioned as is prescribed by the fourth section of an act entitled "an act concerning the establishment of towns," approved December 19th 1796. And the said trustees shall convey by deeds in fee simple, the lots sold, to the purchasers or their assignees. In case of any vacancy by death, resignation or removal from the county or otherwise, of any of the trustees, a majority of the remaining trustees shall fill up such vacancy, by choosing some of the inhabitants of the county thereto. The lots set apart for the public buildings, shall be considered as the property of the public, and not appropriated to any private use.

Sec. 2. *And be it further enacted by the authority aforesaid*, That the county court of Estill shall cause the streets of said town of Irvine to be repaired and kept in good order, as other highways are by law directed to be.

Further duties  
of the trustees.

Sec. 3. *And be it further enacted*, That it shall be the duty of the trustees of said town, before they make sale of said lots, to estimate the value of the lots in said town that have been improved, as though no improvements had been made; and the said Clay shall be responsible to the right owner or owners, for the amount that said improved lots may be estimated at, exclusive of said improvements; and the bond the said Clay is directed to execute, before he receives assignments of the bonds for the purchase money of said lots, shall cover the estimated value of said improved lots.

#### CHAPTER CCCXL.

*An ACT for the relief of George Wilhelms, James Blue, jun. and Richard Morris.*

Approved January 28, 1812.

They were proprietors of head-right claims. This act relieved them from the effects of some errors and irregularities.



## CHAPTER CCCXLI.

1811.

*An ACT to amend the act entitled "an act to empower Securities to recover Damages in a summary way."*

Approved January 28, 1812.

The act to which this is an amendment, will be found in Vol II, page 37.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That in all cases where judgment hath been or shall hereafter be entered up in any of the courts of this commonwealth, otherwise than by confession, against any person or persons, as security or securities, their heirs, executors or administrators, upon any note, bill, bond or obligation; or where judgment hath been or shall hereafter be entered up in any of the courts of record within this commonwealth, otherwise than by confession, against any person or persons, their heirs, executors or administrators, as appearance bail, or special bail, and the amount of such judgment, or any part thereof, hath been paid or discharged by such security or securities, or by such appearance bail or special bail, his, her or their heirs, executors or administrators, it shall and may be lawful for such security or securities, or such appearance or special bail, his, her or their executors or administrators, to obtain judgment by motion against such principal obligor or obligors, or such principal defendant or defendants, his, her or their heirs, executors or administrators, for the full amount of what shall have been paid by the said security or securities, or by such appearance or special bail, his, her or their executors or administrators, with legal interest thereon from the time of such payment until the same shall be discharged by such principal obligor or obligors, or principal defendant or defendants, together with the cost of such motion, in any court where such judgment may have been entered up against such security or securities, or appearance or special bail, his, her or their heirs, executors or administrators; or in any other court of this commonwealth, in the county where said principal obligor or obligors, or such principal defendant or defendants, resides, such court having jurisdiction of like sums: *Provided always*, that no judgment shall be obtained by motion as aforesaid, unless the party or parties against whom the same is prayed, shall have ten days previous notice thereof in writing, served upon

Securities or bail having paid the debt of their principal, may recover it by motion.

1811. him, her or them, or left at his, her or their usual place of abode.

Sec. 2. *Be it enacted*, That when a cause is continued at the costs of either party litigant, the adverse party may sue out execution for his costs incurred in consequence of such continuance; but a lawyer's fee shall not be allowed.

Sec. 3. *Be it further enacted*, That when judgment shall be entered against two or more joint obligors, or joint securities, their ex-cutors or administrators, it shall be lawful for either of them, having paid the full amount of the judgment or costs, to recover judgment against the co-obligor, or co-security, or their representatives, for the proportion of the judgment and costs which such co-obligor or co-security, or their representatives, ought to have paid, together with legal interest thereon: which judgment may be had by motion in any court having jurisdiction of the amount demanded, upon legal notice.

## CHAPTER CCCXLII.

### *An ACT to increase the jurisdiction of Magistrates.*

Approved January 30, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That hereafter justices of the peace in the several counties in this commonwealth, shall have original jurisdiction of all debts and accounts not exceeding fifty dollars.

Sec. 2. *Be it further enacted*, That when a justice shall issue his warrant for any sum within his jurisdiction, and over the sum of twenty dollars, founded on a note or other instrument of writing, for the direct payment of money, it shall be his duty to endorse on said warrant that "special bail is required;" and the officer, upon executing the same, shall take bail endorsed upon the warrant in the following words, to wit: "I, A. B. do hereby agree to be special bail for the within named C. D. Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_." And on the defendant's failing or refusing to give such bail, the officer is hereby directed to commit him, her or them to the jail of his county, until he, she or they shall give such bail, or shall be otherwise discharged by due course of law. And the officer, for

taking the bail aforesaid, shall be entitled to twenty-five cents, to be taxed and collected as other costs. 1811.

Sec. 3. *Be it further enacted* That the justices of the peace in this commonwealth, shall hereafter, in addition to the fees now allowed by law, be entitled to the following fees for the trial of all sums over five pounds, to wit: For issuing a warrant, twelve and one half cents; giving judgment, twelve and one half cents; issuing execution, twelve and one half cents. And he shall keep a book in which he shall record all his proceedings; and shall be entitled to twelve and one half cents for each case tried and recorded as aforesaid. Certain fees allowed to magistrates. Their duty.

Sec. 4. *And be it further enacted*, That in all cases tried and determined before a single justice, where the matter in controversy shall be above five pounds, either party shall have a right to appeal from the judgment of such justice to the circuit court of the county in which the judgment shall have been given. Which appeal shall be docketed by the clerk of said court as other causes; and shall be tried and determined in all respects as it would or might have been had it originally been instituted in said court; said court making such order therein, as to its preparation for trial, as they may deem right and equitable: *Provided however*, that nothing in this act contained, shall be so construed as to repeal the law now allowing appeals from the judgment of a single justice. Party aggrieved may appeal to circuit court. There to be tried and determined as other cases originating therein. Provided.

Sec. 5. *Be it further enacted*, That on the granting of all appeals from judgments of magistrates for sums exceeding five pounds, it shall be the duty of the magistrate before whom the trial was had, to transmit all papers had before him on such trial, to the clerk of the circuit to which the appeal is taken, at or before the court next succeeding the granting such appeal, together with a certificate of the costs on the trial before him: which costs shall be taxed by the clerk as the other costs, and collected accordingly. On appeals, the justice to transmit to the clerk of circuit court a copy of record & certificate of costs. Costs, how collected.

Sec. 6. *Be it further enacted*, That the person praying an appeal, shall, in the clerk's office of the circuit court to which the appeal is returnable, enter into bond and security, to be approved by said clerk, in a sum not less than double the original debt and costs, with condition to pay the same provided he gets cast. And no appeal shall be dismissed for any irregularity in the pro- Party appealing to enter into bond. Conditions. No appeal to be dismissed for irregularity.

1811. ceedings had before the magistrate; but the same shall be tried on its merits, as though no trial had been previously had thereon.

Where credits are endorsed to as to reduce it to a certain sum just ces to have exclusive jurisdiction.  
 Sec. 7. *Be it further enacted*, That in all cases where the sum due, or secured by any instrument of writing, shall be reduced by credits endorsed thereon, to a sum not exceeding fifty dollars, in all such cases justices of the peace shall have exclusive jurisdiction for the recovery of such balance.

Parties may arbitrate their differences.  
 Subject to an appeal.  
 Sec. 8. *Be it further enacted*, That in all cases of trial before a magistrate, the parties litigant shall have the same right to settle their difference by arbitration, as is allowed by law in causes pending in the circuit court; and the award returned by the arbitrators, may be made the judgment of the justice; subject, however, to an appeal, under the same rules and regulations as other cases of appeal from the judgment of a justice.

Time in which an appeal may be taken.  
 Sec. 9. *Be it further enacted*, That an appeal may be taken from the judgment of any justice of the peace, at any time within twenty days after the time of granting the judgment, and at no time thereafter.

Duty of justices in case of removal or resignation, &c of their representatives, in case of death.  
 Sec. 10. *Be it further enacted*, That hereafter, when any justice of the peace may resign or remove out of the county, it shall be his express duty to return all the papers, and his record book, to the clerk of his county, in all cases of judgments over five pounds; or in case of the death of such justice, the clerk of the county court shall demand and receive from the representatives of such justice, such papers and record book, to be by such clerk filed and preserved in his office; from which copies may be given to any person requesting the same; and when certified by the clerk, shall be evidence as other records are at present under the existing laws of this state.

Duty of clerk of county court in certain cases.  
 Constables to give bond.  
 Conditions.  
 On failing or refusing to pay over monies collected, how to be proceeded against.  
 Sec. 11. *Be it further enacted*, That within six months after the passage of this act, each constable in this commonwealth, shall, in the court of his county, enter into bond with good security, in the penalty of one thousand dollars, conditioned as the law directs, for the faithful performance of the duties enjoined on him by law; and on any constable failing or refusing to pay over to the plaintiff or his attorney, any money by him collected, where the sum exceeds five pounds, he shall be liable to a motion in the circuit court, under the same rules and regulations which now govern motions against sheriffs.

Sec. 12. *Be it further enacted*, That whenever an execution is put into the hands of any constable in this commonwealth, and he fails or refuses to return the same, within twenty days from the return day of said execution, he and his securities, or any of them, shall be liable for the amount thereof, to the person in whose name the execution issued, with ten per centum damages thereon, to be recovered in like manner upon motion, as other monies are to be recovered of constables. 1811.  
On failing to return an execution, him & his securities to be liable for the amount and ten per cent. damages. How recovered.

Sec. 13. *And be it further enacted*, That it shall not be lawful for a justice of the peace to issue any warrant in any civil case, except on personal or written application of the plaintiff to him, or the filing with him the bond, note, or some other written specialty, as evidence of the debt. Personal or written application to be made for a warrant in all cases.

Sec. 14. *Be it further enacted*, That the party praying an appeal from the judgment of a single justice, where the amount in dispute shall be above five pounds, shall have a summons executed on the appellee at least ten days before the court at which the appeal shall be set for trial; which summons shall be issued by the clerk and executed by the sheriff or constable, at the request of the appellant. On an appeal, a summons shall be issued against the appellee.

Sec. 15. This act shall commence and be in force from and after the first day of June next. Commencing clause.


Sec. 16. *Be it enacted*, That in cases of appeal to the circuit court, when the appellant executes bond with approved security in the clerk's office, it shall be the duty of the clerk to issue a *supersedeas*, staying all further proceedings until the trial in the circuit court; and upon the receipt of such process, the officer having any execution, shall stay all further proceedings. In cases of appeal the clerk is to issue a supersedeas.

### CHAPTER CCCXLIII.

#### *An ACT to amend an act entitled "an act concerning Occupying Claimants of Land."*

Passed, according to the provisions of the constitution, notwithstanding the Governor's objections, January 31, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That if any person hath peaceably seated or improved, or shall hereafter so seat or improve any lands, supposing them his own by reason of a claim in law or equity, the foundation of such Persons peaceably seating & improving lands to be paid therefor in certain cases.

1811.  claim being of public record, but which lands shall prove to belong to another, the charge and value of seating and improving, shall be paid by the right owner, to such seater, improver, or his assignee or occupant so claiming.

In what case the value of the land to be paid to the right owner.

Sec. 2. But if the right owner is not willing to disburse so much, an estimate shall be made of the value of such lands, as if no such seating or improving had been made; also of the value of such seating and improvement. If the value of the seating and improving exceeds three-fourths of the value of the land, as if it were unimproved, then the said valuation shall be paid to the right owner by the seater or improver, or occupant claiming the same. But if the value of the seating and improving exceeds not three-fourths of the value of the land, estimated without regard to the seating and improvement as aforesaid; then the seater, improver, or occupant claiming the same, shall have the value of his improving and seating, to be paid by the right owner of the land.

And in what case the value of seating, &c. to be paid the occupant.

Occupant free from rent, &c. before judgment.

Sec. 3. That every such seater, improver, or occupant, shall be free and acquit from action, plaint, suit or demand for any charge of rent or profit, during his occupancy at any time before judgment or decree against the validity of his claim by the court of original jurisdiction; nor shall such seater, improver, or occupant, by any delay or hindrance of justice, after such judgment or decree, become chargeable with rent for more than five years.

Commissioners appointed in certain cases to assess damages, &c.

Sec. 4. The court rendering judgment of eviction against such seater or occupant, or in case he shall assert his claim in equity, then the court rendering the decree against him, shall nominate seven fit persons as commissioners, standing indifferent between the parties; who, or any five of whom, shall at the request of either party, after reasonable notice to the adversary, go on the lands from which the occupant is to be evicted, and make the assessments of damage and waste committed after suit brought, and of rents and profits accruing after judgment or decree as aforesaid; of the value of improvements on the land from which the occupant is to be evicted; and of the value of the land at the time of such assessment, regarding it as if such seating or improving had never been made; all which they shall separately and distinctly specify and report to such court.

Sec. 5. The said commissioners shall be charged on 1811.  
oath, before some justice of the peace, or in open court,             
to act impartially and without favor to either party; Commissioners  
and they shall in their report name the justice or court to act on oath.  
before whom they were so charged upon their oaths.

Sec. 6. The court, for just exception to the report, Court may re-  
may re-commit it to the same commissioners, or to commit the re-  
others. port of the com-  
missioners.

Sec. 7. The commissioners shall make out one copy Copies of com-  
of their report, for each and every party, to be deliver- missioners' re-  
ed on request, and return the original to court; but the port to be made  
court shall not act thereon, until it shall appear to them out.  
that the parties have had at least ten days notice of the  
court to which it would be returned, or are both present  
in court, or until the court succeeding the coming in of  
such report.

Sec. 8. Upon the report of the commissioners, if the Regulations af-  
right owner shall elect to pay for said seating and im- ter the report of  
proving, or if the value of the improvements exceed not commissioners  
three-fourths of the value of the land, he shall give bond  
and security, to be approved by the court, to pay (to  
the seater or occupant, as the case may be) the value of  
the seating and improving, in two equal annual instal-  
ments, with legal interest upon each instalment from the  
date of the bond until paid.

Sec. 9. But if the right owner shall fail to give the Where right  
bond and security, a judgment shall be entered against owner fails to  
him in favor of the seater or occupant, as the case may give bond, judg-  
be, for the value of the improvements; or where there ment rendered  
are several improvers or occupants, then several judg- against him.  
ments shall be entered in favor of the respective scaters  
or occupants for their respective portions; or at his or  
their election, they may take the land, giving bond and  
approved security to pay therefor, in two equal annual  
instalments, with legal interest until paid.

Sec. 10. But if the successful claimant is not willing Occupants to  
to pay for the charge of seating and improving, and the give bond where  
value of the improvements exceeds three-fourths of the land falls on  
value of the land, estimated as aforesaid; in that case their hands,  
the occupant or occupants shall give bond and approved  
security to pay the estimated value of the land, in two  
equal annual instalments, with interest on each instal-  
ment from the date until paid; but if the occupant or  
occupants shall fail to give such bond and security, the

1811. court shall render judgment or judgments against the seater or seaters, or occupants, as the case may be, for the estimated value of the land, or of their respective portions: *Provided however*, that the successful claimant shall release his claim to the occupant, and give bond and approved security to refund the money, in case the occupant or improver should be evicted by any claim paramount to that so released: *Provided always*, that any rents, damages, waste or profits as aforesaid, reported against the occupant, shall be deducted by the court from the estimated value of the improvements; or where the case may require, the court shall render judgment therefor, in favor of the successful claimant, against the occupant or occupants respectively, unless the payment thereof, in two equal annual instalments, together with interest, shall be secured by bond with approved security.

*Proviso.*

*Proviso.*

Sec. 11. The bonds given in pursuance of this act, shall have the force of judgments; and thereupon execution may issue for each instalment, as in case of replevin bonds: which executions shall be endorsed that "no security of any kind shall be taken."

*Bonds to have the force of judgments.*

Sec. 12. The occupant shall not be evicted or dispossessed by a writ of possession, until the report of the commissioners shall be returned, and a judgment or judgments rendered, or a bond or bonds be executed in pursuance of this act.

*Occupant not to be evicted.*

Sec. 13. The commissioners shall have full power to compel the attendance of witnesses, administer the necessary oaths, and examine them relative to any fact whereof they are required to make report: they shall have a reasonable allowance for their services, at the discretion of the court, to be paid by the person applying for the appointment of commissioners.

*Witnesses compelled to attend.*

Sec. 14. The court may, by consent of parties, without suit or upon their judgment of eviction, upon the award of arbitrators, appoint commissioners to make the assessments; and thereupon render judgments according to the provisions of this act.

*Court may appoint commissioners without suit, by consent of parties.*

Sec. 15. And whereas by the laws of this commonwealth, persons are authorised to relinquish lands to this commonwealth, and certain attempts have been made to relinquish to the commonwealth a small portion of land, including the improvements of occupants, thereby to re-



cover the balance only of the survey, leaving so small a portion of land around the improvements, as to render them of little use to the occupants: therefore,

1811.

*Be it enacted*, That all such attempts, either by relinquishment to the commonwealth, or by any other device, shall be of no effect or avail, to avoid or evade the provisions of this act. The relinquishment of certain lands prohibited.

Sec. 16. All acts or parts of acts coming within the purview hereof, shall be and the same are hereby repealed. Repealing clause.

#### CHAPTER CCCXLIV.

##### *An ACT concerning removed Certificates.*

Approved January 31, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That no certificate claim, granted by any county court, or court of commissioners for head-right lands, as an original, additional or removed certificate claim, shall be entered or surveyed, in any other than the county in which such certificate issued, or in those which have been formed out of said county, since the granting such certificate or certificates; and all such entries and surveys which shall be made contrary to the provisions of this act, shall be null and void, any thing to the contrary notwithstanding. Certificates, when to be entered and surveyed.

Sec. 2. *Be it further enacted*, That the money in the treasury, paid for the lands acquired at the Tellico treaty, shall be subscribed and applied as bank stock, for the benefit of the state, as in other cases. Money now received on Tellico lands to be stock.

#### CHAPTER CCCXLV.

##### *An ACT to amend the Venue Law in Civil Cases.*

Approved January 31, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That it shall and may be lawful for any person or persons, having any suit or suits depending in any circuit court within this commonwealth, to prefer his, her or their petition to a circuit judge, or the two assistant judges of the court where the suit or suits are depending, accompanied with the proper affidavit now required by law, praying a change of venue in the cause or causes prayed to be removed; Petition to be preferred to circuit judge or assistants.

1811. and it shall and may be lawful for such judge or judges, to order a change of venue in such cause or causes, provided the opposite party has received reasonable notice in writing, of the time and place of such application, any law to the contrary notwithstanding.

Repealing  
clause.

Sec. 2. *Be it also further enacted,* That so much of the present venue law as requires the order for a change of venue to be deposited with the clerk of the court where the suit is depending, thirty days before the suit shall be set for trial, shall be and the same is hereby repealed: *Provided however,* that no such removal as aforesaid, shall be had on any suit heretofore removed by order of a circuit judge.

#### CHAPTER CCCXLVI.

*An ACT authorising John Brown to build a Bridge across the Kentucky River.*

Approved January 31, 1812.

*BE it enacted by the general assembly of the commonwealth of Kentucky,* That John Brown, or his assigns, his or their heirs or legal representatives, be, and he or they are hereby authorised to erect a bridge across the Kentucky river, at Frankfort, from his ferry lot or landing, on the north side, to his ferry lot or landing on the south side of said river, under the same rules and regulations, and to be entitled to the like emoluments, and subject to the like penalties and restrictions, as are contained in an act passed by the general assembly on the 21st day of December 1805, entitled "an act authorising John Pope to erect a bridge across the Kentucky river: *Provided,* that the said bridge shall be completed, for the safe passage of waggons and carriages, within two years from the first day of November next.

#### CHAPTER CCCXLVII.

*An ACT concerning certain Records and Papers of the late Supreme Court for the District of Kentucky.*

Approved January 31, 1812.

WHEREAS amongst the papers of the late supreme court for the district of Kentucky, at present deposited in the office of the court of appeals, there are cases in

which final decrees have been pronounced, requiring the execution of deeds of conveyance for land; which deeds it is represented in some instances have not been made, to the prejudice of those entitled thereto:

1811.

Sec. 1. *Be it therefore enacted by the general assembly of the commonwealth of Kentucky*, That it shall be the duty of the clerk of the court of appeals, on the application of any authorised person, to deliver to him a complete transcript, duly certified, of the papers in any such case; which, when delivered to the clerk of the circuit court where the land lies, or the greater part thereof, which is the subject of the suit, and regularly docketed by the clerk of the said circuit court, shall invest such circuit court with complete power to cause the said final decree to be executed according to law, in as full and ample a manner as if the suit had been originally instituted in said court, and within their jurisdiction: *Provided*, that no order shall be made in any such suit, without the person or persons to be affected thereby receiving a reasonable notification of the intended application therefor.

## CHAPTER CCCXLVIII.

*An ACT allowing to Non-Residents whose Lands have been stricken off to the State by the Register, for Taxes, further time to redeem the same.*

Approved January 31, 1812.

*BE it enacted by the general assembly of the commonwealth of Kentucky*, That the further time of two years, from the expiration of an act entitled "an act allowing to non-residents whose lands have been stricken off to the state by the register, for taxes, further time to redeem the same," approved January 15th 1811, shall be and is hereby allowed for redeeming lands, as is provided for by said act.

## CHAPTER CCCXLIX.

*An ACT to amend the several acts respecting the Road from Triplett's Creek to Big Sandy.*

Approved January 31, 1812.

The acts here amended are Chaps. 160 and 243, of this Volume.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That no person shall be au- Persons restric-  
ted from alter-

1811. *thorised to move or alter the said turnpike road, without the consent of a majority of the commissioners and keeper, during the period for which the keeper is bound for keeping the same in repair; nor shall any person be permitted, by fences or other obstructions, to prevent the said keeper from having said road thirty feet wide on good ground, and sixty feet wide (if they shall think proper) on low or wet ground, without the consent of a majority of the commissioners and keeper, under a penalty not exceeding ten dollars for every such offence; to be recovered before a justice of the peace. And any person who shall obstruct said road by cutting down a tree, or otherwise, shall be liable to a fine, before any justice of the peace, for any sum not exceeding five dollars for every such offence. And the money arising under the provisions of this act, shall be paid to the keeper of the turnpike, his agent or assignee.*

*ing the road, or obstructing it.*

*Penalty.*

And whereas some of the commissioners are so inconveniently situated, that it is difficult to have a meeting for the purposes stated in the said recited act: therefore,

*Sec. 2. Be it further enacted, That the county court of Greenup, is hereby empowered to appoint two commissioners, who shall have the same powers, and be entitled to the same compensation, as the other commissioners are entitled to for their services. And in case of death, resignation, or refusal to act, the county court shall have power to fill such vacancies, any thing to the contrary notwithstanding.*

*Court may appoint commissioners.*

*Their duty, &c*

#### CHAPTER CCCL.

#### *An ACT concerning the Donation Lands for the use of Seminaries of Learning.*

Approved January 31, 1812.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky, That whenever the trustees of any seminary of learning shall deem it expedient to sell the whole or any part of their donation lands, the circuit court of the county shall, upon the application of a majority of the trustees, appoint two persons to go and view the lands, and report to the court appointing them, the situation, quality and value of the land; and if upon the report of the persons so appointed*

*Circuit court to appoint viewers*

*Report.*

ed, the court shall be of opinion that a fund in money would be more productive, or more advantageously applied to the institution, than the probable increase of the value of land, they shall appoint three commissioners, who, or any two of whom, shall, before they act, take an oath in open court or before some justice of the peace, faithfully and truly to perform the office of commissioners, as by this act directed. And it shall be the duty of the commissioners under this act appointed, to sell the land agreeably to the order of the court appointing them: *Provided however*, that the commissioners shall not sell the land for less than three-fourths of the value fixed by the persons appointed by the court to ascertain and report the value thereof; but said commissioners shall sell the land on a credit of three years, to be discharged in three equal annual payments; the first payment to be made at the end of the first year after such sale. And the said commissioners may sell the land in parcels, if necessary; but not in such a manner as to render the residue of the tract of little or no value. And the said commissioners shall take bond or bonds, with good security, for the payment of the money, payable to the trustees of the seminary and their successors; which may be put in suit when due, as in other cases, by the trustees or their successors; and the money, when received, applied by the trustees to the use of the seminaries in each county established by law. And it shall be the duty of the trustees, within three months after receiving the money as aforesaid, to report to the circuit court of the county the amount received by them; and the clerk of the court shall file said report in his office; which report shall be taken thereafter as evidence of the amount received by said trustees, whenever thereafter called on for an account of the appropriation of the money.

1811.

May appoint commissioners.

Duty of commissioners.

Sales to be made on credit.

Commissioners to take bond.

Trustees to report the monies received.

Report evidence of the sum received.

Compensation of viewers and commissioners.

Sec. 2. *And be it further enacted*, That the persons appointed by the circuit court as viewers or valuers of the land, and those appointed as commissioners to sell the same, shall have an allowance made them by the circuit court, not exceeding two dollars per day for every day they may necessarily be employed in executing the duties in this act imposed; and such allowance or allowances shall be certified to the county court of the county where such order was made; and it shall

1811. be the duty of the county court to cause such allowance or allowances to be levied in the next levy for their county, and made payable to the person entitled, under the order of the circuit court.

Commissioners to convey lands sold. Sec. 3. *Be it further enacted*, That commissioners who sell the lands under the directions of this act, shall be and they are hereby empowered to convey by deed or deeds, the lands by them sold as aforesaid; vesting all the right, title and interest of the trustees, in and to the lands so sold, to the purchaser or purchasers.

Sec. 4. *And be it further enacted*, That the trustees of the Winchester, Green, Fleming and Pulaski academies, are hereby authorised to sell and convey the balance of their seminary lands, at such time, and giving such credit as they may think proper.

#### CHAPTER CCCLI.

*An ACT to incorporate the Versailles and Washingtonian Library Companies.*

Approved January 31, 1812.

Washingtonian company incorporated. Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That John Willett, James Simrall, Wingfield Bullock, Masterson Ogden, Cuthbert Bullitt, John Logan, James Moore, and the rest of the subscribers who have or may hereafter subscribe to the Washingtonian library company, shall be a body politic and incorporate, to have continuance for twenty years, by the name and style of "The Washingtonian Library Company;" and by that name shall have power to sue and be sued, plead and be impleaded, in any court, or before any judge or justice of the peace in this commonwealth, or elsewhere, in all manner of suits, actions or complaints of any kind whatever, in as full and effectual a manner as any other person or persons, corporation or bodies politic, may or can do; and that they may have and make use of a common seal.

Style.

Directors, when chosen. Sec. 2. *Be it further enacted*, That the shareholders of the Washingtonian library company shall meet at the library room in the town of Shelbyville, on the last Saturday of February next, and on the last Saturday in January every year thereafter, for the purpose of choosing seven directors from amongst their number, a librarian and treasurer, who shall continue in office one

Continuance in office.

year, and until their successors shall have been duly appointed.

1811.

Sec. 3. *Be it further enacted,* That the directors so elected, shall choose from among themselves one as president, who shall not vote only in case of an equal division, and then shall give the casting vote. Four of the directors shall be a sufficient number to proceed to business, and may choose a president *pro tempore*, when their regular president does not attend: they shall at all times possess all the authority vested in them by this act, and such by-laws as are made in pursuance thereof. They shall have power to fill all vacancies which may happen, either in their own body or in any other office of the association; but all officers thus appointed shall hold their offices only until the next general meeting of the shareholders; they shall also have power to choose a secretary, and to call a general meeting of the shareholders, whenever they may deem it necessary.

President.

Secretary.

Sec. 4. The articles of association and by-laws made before this act of incorporation, shall be considered as valid and binding on the members thereof, until the same shall be repealed or altered by the directors; a majority of whom shall have power to make, alter or amend such by-laws and regulations, as may from time to time be thought conducive to the interest of said association: *Provided*, such by-laws shall not contravene the original articles of association, nor be contrary to the laws of this commonwealth.

Efficacy of the existing laws.

By-laws.

Proviso.

Sec. 5. At every general meeting, fifteen shareholders, either in person or by proxy, shall be sufficient to constitute a quorum to proceed to an election, or any other business they may think proper; they shall have full power, in the name of the directors, to recover all sums of money now due under the articles of subscription to said library, or which may hereafter become due to said corporation, as debts of the like amount are now by law recoverable.

Quorum.

Sec. 6. The amount of subscription for each share in said company, shall be twenty dollars; and there shall not be more than one hundred and fifty shares subscribed for, unless a majority of the shareholders who may attend at any stated meeting, may think proper to permit a greater number. The shares shall be transferable in such manner, and under such rules and

Price of shares.

Their number limited.

Transferable.

1811. regulations, as the directors may think proper to prescribe.

Funds of the  
company limited.

Sec. 7. The said corporation may lawfully possess property, whether real or personal, to any amount not exceeding three thousand dollars, exclusive of its books, maps, charts, drawings, &c.

Limitation of  
forfeiture.

Sec. 8. No forfeitures shall be greater than the amount of share or shares held by any delinquent, except for the loss or damage of any book or set of books; which shall be estimated and recovered agreeably to the original articles of association, and the by-laws which are now or may from time to time be adopted.

Shareholders  
may withdraw.

Sec. 9. Any shareholder may at any time withdraw from said association, by entering on the records of the same a relinquishment of his, her or their shares, and discharging all claims which said corporation may have on him, her or them, under the original articles of association, or any by-law made in pursuance thereof, and of this act; and until such relinquishment is made, every shareholder, and his, her or their legal representatives, shall be responsible for the amount of all debts, fines or contributions arising under the articles and by-laws of said association.

Power of the  
present directors

Sec. 10. The directors chosen by the shareholders before the passage of this act, shall have full power and authority to act as such until their successors shall have been duly elected, in such manner as is herein before directed.

Versailles com-  
pany incorpora-  
ted.

Sec. 11. *Be it further enacted*, That William B. Blackburn, John M<sup>r</sup> Kinney, jun. Nathaniel Hart, William B. Long and Joseph Kincaid, and their successors, duly appointed as is herein after directed, be and they are hereby constituted a corporation and body politic, to have continuance for twenty years, by the style of "The Versailles Library Company."

Style.

Certain funds  
vested in the  
corporation.

Sec. 12. *Be it further enacted*, That all sums of money, books, goods or chattels, in possession of or that are now due by subscription, contract or otherwise, or may hereafter be subscribed for the use of said company, is hereby vested in said corporation; and that they may receive any gift, grant or bequest of money, books, goods or chattels, which may be made by any person or persons capable of making said gifts or grants. All which sums of money, goods and chattels, to be laid out

How appropri-  
ated.



in books, maps, charts, &c. for the benefit of said corporation, agreeably to the intention of the donors.

1811.

Sec. 13. *Be it further enacted*, That the said corporation, by the style aforesaid, shall be capable in law to sue and be sued, plead and be impleaded, before any court or courts, or before any judge or justice of this commonwealth, or elsewhere, in all manner of suits, actions or complaints of any kind whatsoever, in as full and effectual a manner as any other person or persons, corporations or bodies politic may or can do.

Legal process.

Sec. 14. *Be it further enacted*, That the said corporation shall have power to use a common seal, and the same to break and renew at pleasure; to appoint a librarian, secretary and treasurer; to appoint their respective duties, and fix their compensation; to remove them from office and appoint others in their places, as often as they may think proper; to make such by-laws as in their opinion may be useful to the institution, and the same to alter and abrogate at pleasure; to fix the price of new shares, and to fill any vacancy that may happen in their number, between two annual meetings; to levy and collect fines and forfeitures, and to determine and transact all business appertaining to said corporation, or said company, agreeably to the rules, ordinances and by-laws thereof, during their continuance in office: *Provided however*, that not less than five of the trustees shall be a quorum to do business; that no by-laws shall be made repugnant to the constitution or laws of this commonwealth.

Their seal.

Their officers.

By-laws.

General powers.

Quorum.

Sec. 15. *Be it further enacted*, That there shall be an annual meeting of the members of said company, at the library room, or other suitable place, as the trustees may direct; of which the trustees shall cause at least thirty days notice to be given by advertisement at the doors of the public houses in the town of Versailles; at which time and place, the members, or such of them as are present, either personally or by proxy, evidenced by a note in writing from the shareholder, shall elect by ballot nine trustees out of their number, to serve for the year next ensuing their election, and until others shall be elected to fill their place, and consent to serve: *Provided always*, that a majority of the shareholders, either personally or by proxy, shall be necessary to elect the trustees; that each shareholder shall be entitled to one

Annual meetings.

Notice thereof.

Trustees.

What No. may elect trustees.

1811. vote for each share he may hold, provided the number does not exceed five ; and no person shall be entitled to vote who is in arrears to said institution, either by fine, forfeiture or contribution.

Sec. 16. *And be it further enacted*, That the first election for trustees shall be held on the first Saturday in June next, and on the first Saturday in June in every year thereafter : and in case a majority of the members should not appear to choose trustees, at the time appointed by this act, the elections shall be held thereafter as the attendance of a majority can be obtained for that purpose, previous notice thereof being given as aforesaid.

Sec. 17. *And be it further enacted*, That each shareholder shall be at liberty to transfer or relinquish his share or shares, and shall forever thereafter be released from all contribution on account thereof.

#### CHAPTER CCCLII.

*An ACT to change the Venue for the Trial of Jesse Cravens, William Brown and Thomas Outton.*

Approved January 31, 1812.

Cravens was prosecuted for forgery, in Ohio county : this act authorised a change of venue to Hardin. Brown was prosecuted for perjury in Caldwell county : this act authorised a change of venue to Christian. Outton was indicted for perjury in Fayette : this act authorised a change of venue to Clarke.

#### CHAPTER CCCLIII.

*An ACT concerning the Towns of Flemingsburg and Cynthiana.*

Approved January 31, 1812.

WHEREAS the plat or plan of the town of Flemingsburg, in the county of Fleming, as laid off by George Stockton, sen. the original proprietor thereof, has by unavoidable accident been lost ; by reason whereof, the owners of lots in said town labor under great inconveniences : for remedy whereof,

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That the trustees to be elected for the said town of Flemingsburg, at their next stated election, or a majority of them, shall, as soon as may be after their said election, proceed to make or

Trustees to  
cause a new plat  
to be made out.

cause a plat of the said town to be made, as nearly as possible agreeable to the original plat, as laid off by George Strockton, sen.; which plat, when completed, shall for the greater safety, and for the convenience of the holders of lots in said town, be recorded in the record books of the said trustees by their clerk, and also in the clerk's office of the said county court of Fleming; and that the same shall be as effectual and binding on the several holders of lots within the said town as though the original plat had not been lost: *Provided however*, that if any person shall have built or improved on the ground of another, having mistaken the boundary of his lot, and believing the ground so built on to be his own, the owner of such ground shall be obliged to accept of such compensation for the same as shall be adjudged reasonable by the said trustees of said town.

Sec. 2. *Be it further enacted*, That the trustees of the town of Cynthiana are hereby authorised to tax the citizens of said town, not to exceed two hundred dollars per annum, and to be levied in the following manner, to wit: For every thousand dollars of freehold property in said town, one dollar; and a levy not to exceed fifty cents annually, on each white male inhabitant above twenty-one years of age.

Sec. 3. *Be it further enacted*, That the said trustees shall be further authorised to appoint some fit person to collect the same; and if any person refuse to pay the amount they are taxed with, it shall be lawful for the collector to put the same in some officer's hands for collection, and it shall be the duty of the justice to give judgment for the same, with legal costs.

#### CHAPTER CCCLIV.

*An ACT to incorporate the Frankfort Library Company.*

Approved January 31, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the present and those who may hereafter become shareholders of the Frankfort library, and their successors, be and they are hereby made and constituted a body politic and corporate, by the name of "The Frankfort Library Company;" and by that name shall have perpetual succession, and a common seal, with power to break, alter or change the same at pleasure.

1811. *Sec. 2. Be it further enacted,* That the said corporation shall have power to purchase, receive and possess goods and chattels, rights and claims, lands and tenements, in fee or otherwise, for the use of the said library, and the same to grant, let, alien or assign; and the said company, by the name aforesaid, may sue and be sued, plead and be impleaded, either in law or equity, in any court, or before any judge or justice having jurisdiction of the case.

*Sec. 3. Be it further enacted,* That the said library company may meet when and where they shall think proper; and a majority of them, when met, shall have power to transact the business of said company; to appoint out of the members of said company, such officers as they may think necessary, for the management of the affairs of said company; to make such by-laws, rules or regulations, as they shall deem requisite for the government and benefit of the said library company; to fix the price of shares in said library; to lay any contribution on the members of said company which they may think necessary for the support and promotion of the said institution; to admit members into the said company, upon such terms as they may think right, and to expel any member from said company, for any cause which they shall think sufficient: *Provided,* that the said company shall make no law, rule or regulation, contrary to the laws of this commonwealth.

*Sec. 4. Be it further enacted,* That the said company shall, at their first meeting, and such other meetings as by their by-laws they may appoint, elect seven directors, a majority of whom, when elected, may act, and invest them with such of the powers hereby vested in the said corporation, as they may think essential to the advancement and government of the said corporation; and that the said directors shall continue in office until their successors are duly elected.

*Sec. 5. Be it further enacted,* That shares in the said library may be transferred, in the manner to be prescribed by the by-laws of said company.

## CHAPTER CCCLV.

1811.

*An ACT to amend an act entitled "an act concerning public Roads."*

Approved January 31, 1812.

The act here amended will be found in Vol. I, page 633.

Sec. 1. *BE it enacted by the general assembly of the* Duty of ferry  
*commonwealth of Kentucky,* That the owners of the se- keepers.  
 veral ferries within this commonwealth shall keep the  
 roads leading to and from their respective ferries, be-  
 tween low and high water mark, in good repair: *Pro-* Proviso.  
*vided,* that high water mark does not extend farther than  
 the first principal bank of the river on which such fer-  
 ries may be established; in which case said roads shall  
 be kept in repair by the owners of such ferries to the  
 top of such bank.

Sec. 2. *Be it further enacted,* That the owners of the Penalty on fer-  
 several ferries shall be subject to the like penalties, to ry keepers.  
 be recovered in the same manner, as the surveyors of  
 highways are now subject to by the laws of this com-  
 monwealth.

Sec. 3. *Be it further enacted,* That if it shall appear County courts  
 to a majority of all the justices of the peace in any of the may exercise  
 counties in this commonwealth, that from the moun- discretion as to  
 tainous and broken situation of their county, that it the width of  
 would be unnecessary and oppressive to the citizens to roads.  
 compel them to clear any road or roads thirty feet wide;  
 it shall and may be lawful for such court to direct the  
 surveyor or surveyors of such road or roads, to cause  
 the same to be cleared not less than fifteen nor more  
 than thirty feet wide.

## CHAPTER CCCLVI.

*An ACT for the opening the Navigation of Drake's Creek, in Warren County.*

Approved January 31, 1812.

Sec. 1. *BE it enacted by the general assembly of the* Commissioners?  
*commonwealth of Kentucky,* That George Harris, George  
 Hudspeth, Thomas A. Covington, William Skiles and  
 Jesse Kerby are appointed commissioners to open and  
 keep in repair the navigation of Drake's creek, from  
 John Harris's merchant mills, to its confluence with Big  
 Barren river; and they are hereby empowered to raise To raise a fund  
 Vol. IV. 2 W by subscription.

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1811.<br>How appropriated.               | by subscription the sum of fifteen hundred dollars, either in money, property or labor, for the purpose aforesaid: and the said commissioners, or a majority of them, are hereby authorised to cause all obstructions to the navigation of said stream to be removed, and to cut down all timber projecting over said stream, shrub all points of islands, remove all fish dams, rocks or logs. And the said commissioners, or a majority of them, as soon as they shall raise a sufficient sum for the purpose aforesaid, may proceed to employ hands, and superintend the clearing out of said stream, agreeable to the provisions of this act: <i>Provided however</i> , that the said commissioners before they proceed to clear out said stream, shall, in the county court of Warren county, enter into bond with sufficient security, to be approved of by said court, in the sum of two thousand dollars; conditioned to appropriate the money, property and labor so raised to removing the obstructions in said stream, in pursuance of the directions of this act. And the said commissioners shall receive compensation for their services in proportion to the time they, or either of them, may serve, out of the subscriptions to be raised by this act, not exceeding one dollar and fifty cents for each day which they shall actually serve in clearing out said stream. |
| Commissioners to give bond.              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Penalty.                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Condition.                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Compensation.                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Penalty on persons placing obstructions. | <p>Sec. 2. <i>Be it further enacted</i>, That from and after the passage of this act, any person erecting, or causing to be erected, any fish-dam, bridge, or other obstructions to the passage of boats up or down said stream; shall for every such offence, forfeit and pay two dollars for every twenty-four hours such obstructions shall remain therein: <i>Provided however</i>, that any person who shall erect mills or other useful water works on said stream, with the necessary locks and slopes to admit the free passage of boats and all other water crafts, shall not come within the purview of this act as obstructing of said stream.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Proviso in favor of mills.               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Subscriptions may be recovered by suit.  | <p>Sec. 3. <i>Be it further enacted</i>, That the commissioners under this act, shall be authorised to institute suits before the competent tribunals to recover the subscriptions under this act.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

## CHAPTER CCCLVII.

1811.

*An ACT to alter the time of Session of the Warren Circuit Court.*

Approved January 31, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That the circuit court of Warren county shall hereafter commence on the last Mondays in February, May and August in each year, and shall sit twelve judicial days, if the business of said court shall require it.

Sec. 2. *Be it further enacted,* That all process and recognizances returnable to the first Monday in March next, shall be, and the same is hereby made returnable to the first term of said circuit court of Warren county, as fixed by this act.

Sec. 3. *Be it further enacted,* That the county court of Warren county shall continue to be held on the first Monday in each month, as now required by law.

## CHAPTER CCCLVIII.

*An ACT authorising the County Court of Livingston to sell and convey two small Tracts of Land formerly vested in them for public purposes.*

Approved February 1, 1812.

## CHAPTER CCCLIX.

*An ACT empowering non-resident femmes covert to convey Lands and Tenements by attorney in fact.*

Approved February 1, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That from and after the passage of this act, any non-resident *feme covert* of full age, residing in any of the United States of America, or any of the territories, thereof, having title to, or interest in lands or tenements, lying or being within this commonwealth, may constitute and appoint an attorney in fact, with full power to execute deeds of conveyance, transferring all such right, title and interest: *Provided* however, such appointment shall be made by deed in writing, subscribed, sealed and acknowledged by both husband and wife, in the presence of two justices of the

Nonresident femmes covert may convey their lands and tenements by an attorney in fact.

Provido.

1811. peace in the county where they reside; and that said *feme covert* having been previously examined privily and apart from her husband by the said justices, and the said writing shewn and explained to her by them, shall declare that she did freely and willingly seal and deliver the same, and wishes not to retract it, but consents that it may be recorded, and have full force and effect. And the said justices shall annex to the said deed of attorney a certificate under their hands and seals of such privy examination by them, and of such consent yielded by her; and the clerk of the county court of said county shall certify that the said justices are acting justices of the peace in said county, and affix to such certificate the seal of his county.

To be privily examined by 2 justices of the peace.

Justices to certify the same.

Sec. 2. *And be it further enacted*, That all powers of attorney executed in conformity to the provisions of this act shall be recorded in the office of the court of appeals of this commonwealth, together with the several attestations thereon.

Where the conveyance to be recorded.

## CHAPTER CCCLX.

### *An ACT concerning the Town of Falmouth, in Pendleton County.*

Approved February 1, 1812.

Preamble.

WHEREAS it is represented to the present general assembly, that the plat recorded in the clerk's office of the county court of Pendleton, purporting to be the plan of the town of Falmouth, is defective, and almost unintelligible: for remedy whereof,

Power and duty of the trustees.

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That the trustees of the said town are hereby authorised and directed to appoint some fit person to make out a complete and accurate survey and plat of said town, according to the original plan thereof, designating the lots, their numbers, size, the streets and alleys, their width, names, and where any two lots have conflicting numbers, to make such notes as will hereafter distinguish them from each other. And the person thus appointed, shall set up at any corner or corners of said lots, stones or posts, where they may be necessary. And when the plat of said town shall be completed, and approved by said trustees, or a majority of them, they shall give public notice at the



court-house door in said town, at least one month preceding the county court at which the application is to be made, that the plat so made out will be presented for the approbation of such court. And if upon examination, said court finds said plat correct, they shall direct their clerk to record the same and certify the original to the clerk of the board of trustees for said town, who shall attach said plat to the book of proceedings of said trustees; and such plat shall forever thereafter be deemed and taken as the true and correct plan of said town: *Provided*, that nothing in this act shall be construed to authorise the alteration of the numbers of the lots, as they now stand on the original plat.

1811.

Sec. 2. *Be it further enacted*, That the trustees of the town of Falmouth, in addition to the powers vested in them by the general laws regulating towns in this commonwealth, shall have power to shut up such streets and alleys as may appear to them can never be beneficial or advantageous to said town, and such as by keeping open can be of no service to the public or individuals: *Provided nevertheless*, should any person or persons owning a lot or lots in said town, think himself, herself or themselves injured by shutting up any street or alley adjoining his, her or their lot or lots, it shall be lawful for such person or persons to apply to the court of said county for a writ in the nature of a writ of *ad quod damnum*; which writ said court are hereby directed to grant; to be directed to the sheriff, commanding him to summon a jury of freeholders, in no wise interested or related to either party, to enquire into the damage sustained by such person so applying, on account of shutting up any such street or alley. Which inquest shall be taken by the sheriff, and a report thereof returned to the next court for said county; who shall thereupon give judgment and award execution against the person or persons on whose application such street or streets, alley or alleys, were shut, for the amount of damages found by the jury, if any there be. And such person or persons shall cause such street or streets, alley or alleys, to be forthwith opened, if in the opinion of the jury it ought to be done.

Further powers  
of trustees.

Sec. 3. *Be it further enacted*, That for the purpose of raising a fund for the purpose of carrying into operation the first section of this act, it shall be lawful for

A tax to be levied on property.

1811. the trustees to levy a tax on the property, real and personal, within the limits of said town; and on a failure of any person to pay said trustees the portion of tax so charged against him or her, within six months after levying such tax, the said trustees are hereby authorised and empowered to recover the same by warrant, before any justice of the peace of the county, with costs; and such justice shall grant execution accordingly; which may be levied on any property the defendant may have within the limits of said town, real or personal: *Provided however*, that nothing in this act shall be construed so as to authorise the trustees to levy on the property of any one person, a sum exceeding one dollar; nor in the total amount, a sum exceeding fifty dollars.

*Proviso.*

#### CHAPTER CCCLXI.

*An ACT for the erection of Iron-Works, and for other purposes.*

Approved February 1, 1812.

*Proceedings of Bath ratified.* Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the proceedings of the Bath county court, at their October session 1811, condemning a seat on main Slate, for the erection of iron and other water-works, and on which seat a forge and other works have been recently erected, be and the same are hereby legalized and made valid to all intents and purposes.

*Laws respecting navigation repealed.* Sec. 2. *Be it further enacted*, That so much of an act approved December session 1794, as directs the navigation of Slate to be kept open and free from obstruction, from the mouth of Slate to Bourbon furnace, and inflicts a penalty on any person obstructing said navigation, be and the same is hereby repealed, so far as relates or might be deemed applicable to the person, or persons who have erected or may hereafter erect iron, or other works on said seat condemned as aforesaid: *Provided however*, that nothing herein contained shall be construed to affect or impair the right of any person or persons heretofore accrued by virtue of the law hereby repealed.

*Proviso.*

## CHAPTER CCCLXII.

1811.

*An ACT concerning the Auditor's Office.*

Approved February 1, 1812.

WHEREAS from the inattention of the clerks and surveyors, mistakes have taken place in the numbers of certificates returned to the auditor's and register's offices, for lands granted under the several laws granting relief to settlers on the vacant lands of this commonwealth, which makes it difficult for the owners to get out their grants, and in many cases special laws are required to be passed to remove these and other difficulties: therefore,

*BE it enacted by the general assembly of the commonwealth of Kentucky,* That it shall and may be lawful for the auditor of public accounts, in all cases where it shall evidently appear to him that there has been a mistake in the number, or where there has been no number affixed to the certificate, or where there has been a misapplication of the payment or payments made for any tract of land, for him to alter or affix the number, or apply the payment to the proper tract; which alteration shall be noted by him in the margin of the book or books in which the mistake, or supposed mistake, is alleged. And he shall certify the alteration he has made to the treasurer and register; and the register shall make the like marginal notes of alteration; and when he issues the grant, he shall express in the grant the alteration, and further mention that the alteration is not to affect the right of any other person or persons, by reason of such alteration.

Preamble.

Auditor to correct mistakes.

His duty.

Duty of register

## CHAPTER CCCLXIII.

*An ACT concerning the Bond to be executed to make a Writ of Error, issuing from the Court of Appeals, a Supersedeas.*

Approved February 1, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That when any person intends to obtain from the court of appeals, or any judge thereof, an order that a writ of error about to be sued out by him shall operate as a supersedeas, it shall be lawful for such person to execute bond in the clerk's office of the court where the decision intended to be superseded

Bond may be executed when judgment obtained.

1811. is had; which bond shall be taken by the clerk of the said court, with sufficient security and in sufficient penalty, and shall be in substance as follows: Know all men by these presents, that we, A. B. and C. D. are held and firmly bound unto E. F. in the sum of \_\_\_\_\_, of lawful money, to be paid to the said E. F. his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_.

**Form of bond.**

**Condition.** The condition of this obligation is such; that whereas a decree, judgment or order, (as the case may be) was rendered at the \_\_\_\_\_ term of the \_\_\_\_\_ court, between A. B. plaintiff, and E. F. defendant, as follows: (here insert the decree, judgment or order) Now in the event of the said A. B. obtaining a writ of error with supersedeas staying proceedings thereon, and the affirmance of the same in part or entirely, if the said A. B. shall well and truly comply with the decree, judgment or order aforesaid, (as the case may be) as affirmed by the court of appeals, or in case the writ of error with supersedeas be dismissed or discontinued, and shall well and truly satisfy all damages and costs that may be awarded against him in the premises by the court of appeals, then this obligation to be void, otherwise to be and remain in full force and virtue. Sealed and delivered in the presence of \_\_\_\_\_.

**Security to take oath.** And the said clerk shall not accept any person as security, unless such person declares on oath (which shall be administered to him by said clerk) that he is able, after payment of all his just debts, to satisfy the bond; and if such person is accepted as security, the clerk shall endorse on the bond that the security has taken said oath, and he shall file the bond among the papers in the case; for which services the clerk shall be entitled to receive the sum of fifty cents. Whereupon the said clerk shall make out a complete transcript of the record and proceedings in the action or case, and shall certify the same, together with a copy of the said bond and endorsement, annexed thereto according to law; and if the court of appeals, or a judge thereof in vacation, shall award a supersedeas, on inspecting the same, the clerk of the court of appeals shall issue a writ of error with supersedeas accordingly.

**Duty of clerk of court of appeals.**

Sec. 2. *And be it further enacted*, That nothing herein contained shall prohibit any person so inclined, from entering into bond in the clerk's office of the court of appeals, as heretofore, in order to make a writ of error a supersedeas; but it shall be the duty of the clerk of the court of appeals not to accept any person as security in such bond, unless he will take an oath that he is able, after payment of all his just debts, to satisfy the same; which oath the said clerk is hereby authorised to administer, and when administered to make an endorsement on said bond accordingly.

1811.

Bonds may be executed in the office of the clerk of court of appeals.

Duty of clerk of court of appeals.

## CHAPTER CCCLXIV.

*An ACT to amend the several laws concerning the Town of Frankfort.*

Approved February 7, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That it shall be lawful for the inhabitants of the town of Frankfort, who would be entitled to vote for representatives to the legislature, to choose annually on the first Saturday in March, seven trustees; which election shall be conducted by one or more of the acting trustees, to be appointed by the board for that purpose; and the return of the persons elected shall be made to the clerk of the board of said trustees; which shall be recorded in their books. They shall continue in office until their successors are appointed. Previous notice of the election shall, by the clerk of the board, be given by advertisement at the market-house and in some newspaper printed in said town.

When, and how many trustees to be elected.

Return of election to be recorded.

Notice of election.

Sec. 2. No person shall be a trustee of said town, unless he be a freeholder or house-keeper therein.

Trustee must be a freeholder.

Sec. 3. In case of a vacancy in the board of trustees, or of a failure to elect trustees on the day herein directed, a new election shall be held to supply such vacancy or omission, as before directed; except that the time and place of holding the election shall be fixed on by the remaining or former trustees, as the case may be.

Vacancy, how filled.

Sec. 4. The trustees, before they enter upon the duties of their office, shall each take an oath to discharge the duties of their office as a trustee, without favor, affection or partiality.

Trustees to take oath.

1811. Sec. 5. The trustees shall meet once in each month, and as much oftener as they may think proper. If any trustee shall be absent for three stated meetings, without good cause, his seat may be declared vacant, by a majority of all the trustees concurring therein.
- To meet once a month.
- Sec. 6. A majority shall be sufficient to form a board, and to do all business, except otherwise directed in this act.
- Majority form a board.
- Sec. 7. They shall appoint a clerk, who shall continue in office until the succeeding board of trustees are organized; but for good cause may be removed from office. He shall, before he enters on the duties of his office, take an oath before some member of said board, (which they are hereby authorised to administer) that he will, to the best of his skill and abilities, make true entries of the proceedings of said board; that he will safely keep the books and papers which shall come to his hands as clerk, and faithfully discharge the duties of said office. The board may, if they think proper, require bond and security of him for the true and faithful discharge of the duties of his office, or any other written undertaking to that effect which they may deem proper.
- Appoint a clerk.
- To take oath.
- His duty.
- Sec. 8. The trustees of said town shall keep the streets and alleys in said town in good repair; and on failure, they may be proceeded against and fined in the same manner as overseers of the highway.
- Keep streets in good repair.
- Sec. 9. They shall have power to erect and repair a market-house; to appoint a clerk of the market; to prescribe his duties; to make by-laws and ordinances for the government of the market, and to affix penalties to the breach thereof, not exceeding ten dollars; to establish a nightly watch in said town; to prescribe their duties; to authorise a watchman to arrest and confine in a watch-house for the night, any person who may be found acting disorderly or suspiciously in the night; to make regulations concerning the meetings of slaves in said town; and to make such other rules and regulations for the government of said town, as they may deem necessary to the health, peace or security of the inhabitants: *Provided*, they be not inconsistent with the laws and constitution of this commonwealth.
- Regulations respecting market.
- Sec. 10. No by-law or ordinance made by said board shall be effectual, until published twice in some newspaper printed in said town.
- Concerning by-laws.

Sec. 11. No fine for the breach of a by-law shall exceed fifteen dollars; but this shall not prevent a recovery for a new breach of any by-law, nor contravene the provisions of the 12th section of this act. 1811.  
Regulations respecting fines.

Sec. 12. They shall have power to cause footways to be paved in any street, at the expense of each proprietor in front of whose ground such pavement is made, whenever the proprietors of two-thirds of the front ground of any square shall petition therefor. Footways to be paved.

Sec. 13. The trustees shall, in the month of March in each year, appoint two or more persons to take lists of the free male inhabitants of said town, over the age of twenty-one years; and to assess the value of the real and personal property in said town, on the first day of April in said year. The assessors, before they act, shall be sworn to do their duty faithfully, impartially, and to the best of their judgment. Lists of whites to be taken.

Sec. 14. The trustees shall have power to lay a poll tax on the free male inhabitants of said town over the age of twenty-one years, not exceeding one dollar a year; to lay a tax on the real and personal property in said town, any sum not exceeding twenty-five cents for every hundred dollars of the assessed value of such property; to impose a tax on any person who, for compensation, may exhibit any show or feat in said town, provided the same do not exceed the sum of ten dollars a day for any show or feat: *Provided however*, that no tax shall be laid in any case, without the concurrence of five of the trustees. To lay poll tax.  
Tax on shows.

Sec. 15. Nothing in this act contained shall authorise the trustees to impose a tax upon any public buildings, or upon any public office, or on the bank of Kentucky, or on any other incorporated company. No tax on public buildings.

Sec. 16. For collecting all taxes of said town, the said trustees and their successors shall have power to appoint a collector or collectors, and stipulate the compensation for collecting; who shall give bond with good security, in a reasonable penalty, for the faithful performance of his duty as collector, payable to the said trustees and their successors; and if the said collector shall be found delinquent, he shall be liable to pay at the rate of twenty per centum per annum on the money unaccounted for by him, from the time it should have been paid, recoverable in the county of Franklin, by Regulations for collecting taxes.

1811.

motion, on ten days previous notice given to said collector and his security or securities; and the execution on the said judgment shall be endorsed by the clerk that "no security is to be taken;" which shall be obeyed accordingly.

Further regula-  
tions regarding  
taxes.

Sec. 17. The trustees shall also have power to prescribe a time in which the taxes shall be paid; and in case of failure, to add a per centage not exceeding the rate of twelve and a half cents on the delinquents, for defraying the expenses of collections. The collector of the town tax may, after such time as shall be fixed by the trustees aforesaid, proceed to collect the tax by distress and sale of goods and chattels or slaves of the debtor, in the same manner as the sheriff may by law distrain and sell for taxes due this commonwealth; they may distrain and sell slaves, goods and chattels found on any real estate, for which taxes may be due and unpaid, belonging to any person claiming or holding the premises under the person from whom the tax may be due. But if any tenant shall thus be compelled to pay any tax due from his landlord, the landlord shall on request reimburse the tenant the amount of such payment; and if sufficient be not found on the premises within one year to discharge the tax, the collector may then proceed to sell, at the market-house, such real estate, or so much thereof, as will be sufficient to discharge the same with the costs of sale: *Provided*, the time and place of sale shall be advertised at least twice a month for three months, before the day of sale, in some newspaper printed in said town. But such real estate shall be redeemable at any time within three years from the time of sale, upon the owner or any one for him paying the amount of such tax and costs, and an interest thereon at the rate of 100 per cent. a year, and also all taxes that have become due thereon subsequent to the sale: *Provided also*, that in case the real estate of any infant be sold, such infant, or any person on his behalf, shall be allowed three years after such infant shall arrive at the full age of twenty-one years, to redeem said property, upon paying the amount of the tax and costs for which such estate was sold, with interest, and also all taxes that have become due thereon subsequent to the sale.

Trustees to dis-  
burse monies.

Sec. 18. In the expenditure of the money hereby authorised to be raised, the trustees aforesaid may make



such dispositions and appropriations as they may deem most conducive to the interest and well being of said town: *Provided*, four trustees concur therein. 1811.

Sec. 19. The trustees shall, within one month previous to the annual election, distribute to the citizens of said town a printed statement of the receipts and expenditures of that year, and of the arrearages due to or from the trustees, of not more than five years standing. Printed statement of the receipts and expenditures to be distributed.

Sec. 20. If any person shall be guilty of running or racing a horse in the streets, playing or throwing bullets, or shooting at a mark, within the inclots of said town, such person shall, for every such offence, if a white person, forfeit and pay three dollars, to be sued for and recovered as hereafter directed; and if a slave, shall be whipped at the discretion of a justice of the peace, not exceeding fifteen lashes. Penalty for racing and shooting.

Sec. 21. *And be it further enacted*, That whenever information shall be lodged with the trustees, that any free negro, mulatto or person of color, is or shall be going at large or harboring within the said town, without any visible means of subsistence; or if any such person be disorderly or riotous, or keep a disorderly or riotous house, the said trustees may, by order made in the board, cause such person or persons to be apprehended and committed to jail, or bailed to appear at the next county court, who have and shall have authority to enquire into such allegation, and to discharge the person accused as aforesaid, or order him or her to be hired by the sheriff to the highest bidder for any time not exceeding one month; and the money raised by such hiring shall also be paid to the said trustees, and go in aid of the funds of the said town. Regulations respecting free negroes.

Sec. 22. The trustees, or any officer by them authorised, may punish by stripes, not exceeding ten lashes, any slave that may in the night time be found in said town off the premises of his or her master or mistress, without a pass or reasonable excuse therefor.

Sec. 23. If any slave shall be found going at large in said town, working for himself or herself, or contracting or dealing for him or herself, for more than one day at a time (any colorable or pretended hiring to the contrary notwithstanding) it shall be lawful for the trustees of said town, or for any two justices of the peace, to cause such slave to be hired out to the highest bidder, Respecting slaves.

1811. for the term of ten days ; or to commit such slave to jail for ten days, and until his or her prison fees are paid by his or her owner. The money received for such hiring shall go in aid of the funds of said town.

Sec. 24. All fines imposed by this act, or by any by-law of said trustees, may be recovered in the name of the trustees of said town, or in the name of such person as they may direct. All fines received by them shall go in aid of the funds of the town ; they shall be recovered by suit before a justice of the peace, subject to an appeal as in other cases for a similar amount.

No power over South Frankfort. Sec. 25. Henceforth the trustees of the town of Frankfort shall not have or exercise any power or authority over either persons or property within South Frankfort.

All acts coming in the purview of this act, shall be and are hereby repealed.

#### CHAPTER CCCLXV.

*An ACT concerning a House of Public Worship in the Town of Frankfort.*

Approved February 4, 1812.

The object of this act was to incorporate the trustees, authorize them to raise 4000 dollars by lottery for building the house, and to vest it in them and their successors.

#### CHAPTER CCCLXVI.

*An ACT for the relief of Andrew M'Castlin.*

Approved February 4, 1812.

He owned a small tract of land in Wayne county, on which he was digging for salt water. This act permitted him to locate as much unappropriated land as he could within two miles of the place ; price 20 dollars per 100 acres, time of payment four years.

#### CHAPTER CCCLXVII.

*An ACT authorising the Judges of the Mason Circuit Court to hold an additional Term.*

Approved February 4, 1812.

It was only a single term for that year for the trial of some criminals.

## CHAPTER CCCLXVIII.

1811.

*An ACT to amend an act for establishing a Mutual Assurance Society against Fire on Buildings in this Commonwealth.*

Approved February 4, 1812.

The act amended is Chap. 263 of this Volume.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the subscribers (for establishing a mutual assurance society against fire on buildings in this commonwealth) may, so soon as the sum subscribed shall amount to seven hundred thousand dollars, cause a meeting of the subscribers (having first advertised the time and place of meeting) and proceed to the appointment of officers and organization of said society, and cause its operations to be commenced and prosecuted under this and the provisions of the before recited act.

Sec. 2. *Be it further enacted*, That the said society is hereby authorised and empowered to insure the property, whether real or personal estate, goods, wares or merchandize, raw materials, manufactured articles, machinery, tools of mechanics or manufacturers, and every other species of property whatever, whether the same belong to subscribers or non-subscribers, upon such terms and conditions as the president and directors of said society may impose, not inconsistent with the provisions of the before recited act: *Provided however*, that the funds arising from such insurance, shall be appropriated and applied as directed by the act of incorporation.


## CHAPTER CCCLXIX.

*An ACT further to amend the act concerning the Town of Glasgow, in Barren County, and Elizabethtown, in Hardin County.*

Approved February 4, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That if the electors of the said town shall fail to hold their annual election at the court-house on the first Monday in May, for the purpose of electing trustees, it shall and may be lawful for a majority of the former trustees thereof, to appoint some other day in the said month for the purposes afore-

Regulations  
concerning the  
town of Glas-  
gow.

1811.  said, of which day they shall cause at least ten days previous notice to be given by advertisement at three of the most public places in said town: And the said election, and all future elections for said town, shall be conducted by the clerk of the board of trustees, who shall give the casting vote, when there are two or more candidates that have an equal number of votes.

Power and duty  
of the trustees.

Sec. 2. *And be it further enacted*, That it shall be the duty of the said trustees to appoint an overseer or surveyor within the said town, whose duty it shall be to keep the streets of said town in good repair; to call on the male inhabitants of said town, who are fifteen years of age and upwards, to attend such place and at such time as he may direct, with proper tools to work on the streets, and keep the same in good repair: and any person thus notified, who shall fail to attend and work on the streets, or to furnish an able bodied substitute, or attending and refusing to work, without a good and sufficient excuse, shall be subject to a fine of one dollar; to be recovered before any justice of the peace for the county of Barren, by a warrant in the name of the overseer, who shall put the same into the hands of the collector of said town; who shall execute the same and make due return thereof; and shall collect and account for all monies arising from said fines, and for every other breach of the by-laws of said town, in like manner as the taxes are collected by him, and account for the several sums so collected from time to time to the said board of trustees. And in case of the absence of the collector, the warrant or warrants shall be directed to the sheriff of the county, or any constable thereof, who shall execute the same and make due return thereof; and shall also collect and account for the fines in the same manner the collector should do. And the said trustees shall allow the collector a reasonable per centum on all monies collected by him. And the said overseer, before he enters on the duties of his office, shall take an oath (to be administered by one of the trustees) that he will faithfully discharge his duty, without favor, affection or partiality; and shall be subject to the penalty of two dollars and fifty cents, for failing to keep the streets in good repair; to be recovered by warrant, in the name of the trustees of the board, and shall be collected and accounted for as other fines.

Sec. 3. *And be it further enacted*, That the overseer or surveyor appointed or hereafter to be appointed by the trustees of Elizabethtown, Hardin county, whose duty it shall be to keep the streets of said town in good repair, and call on all male inhabitants of said town, who are fifteen years of age and upwards, to attend such place and at such times as he may direct, with proper tools to work on the streets and keep the same in good repair; and any person thus notified who shall fail to attend and work on the streets, or to furnish an able bodied substitute, or attending and refusing to work, without a good and sufficient excuse, shall be subject to a fine of one dollar; to be recovered before any justice of the peace for the county of Hardin, by a warrant in the name of the overseer; who shall put the same in the hands of the collector of said town, who shall execute the same and make due return thereof, and shall collect the same and account for all the monies arising from said fines, to the trustees of said town, and by them appropriated to keeping the said streets in good repair.

1811.

Regulations re-  
specting Eliza-  
bethtown.

Sec. 4. *And be it further enacted*, That the overseer thus appointed by the trustees of said town, before he enters on the duties of his office, shall take an oath (to be administered by one of the trustees) that he will faithfully discharge his duty without favor, affection or partiality; and shall be subject to the penalty of ten dollars, for failing to keep the streets in good repair, to be recovered by warrant, in the name of the trustees of said town, before a justice of the peace for Hardin county, and collected by the collector of said town, accounted for and appropriated as the fines are before mentioned.

#### CHAPTER CCCLXX.

*An ACT authorising the location of certain Seminary Lands, and for other purposes.*

Approved February 4, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the trustees or county courts of all those counties who have not completed the location, surveying and registering their donation seminary lands, have the further term of two years to perform the same: *Provided however*, that nothing herein contained shall authorise the location of any such claim

Trustees and  
county courts  
allowed further  
time to locate  
their seminary  
lands.  
Provido in fa-  
vor of settlers.

1811. *Proviso.* upon land upon which any person is actually settled, with two hundred acres around the same, running to the cardinal points: *And provided also*, that no such claim shall be located upon any of the land secured by the treaties of Tellico or Highwassee; and that all such claims be, in all things, subject to the rules, restrictions and regulations heretofore established by the laws in relation to such claims.

*Certain counties may yet locate.* Sec. 2. *And be it further enacted*, That the justices of those counties which have been erected since the passage of the act authorising each county court in this commonwealth to locate and survey six thousand acres of land, for the use of seminaries of learning, shall be entitled to locate and survey the same quantity of vacant and unappropriated lands, under the same regulations and restrictions as provided in the said recited act.

*Actual settlers to be paid for improvements.* Sec. 3. And when any entry and survey of seminary lands, made before the passage of this act, shall have included any actual settler, such actual settler, before evicted therefrom, shall be paid for their improvement. And in order to ascertain the value of such improvement, the circuit court of the county in which such improvements are made, upon the application of either party, shall appoint seven fit persons commissioners; who, or any five of them, at the request of either party, after reasonable notice given the adversary, and being first sworn before the court, or some justice of the peace, shall proceed to assess the value of such improvements and make report thereof to the court appointing them; which report shall be a record of said court. And all improvers or owners of such improvement, shall retain possession thereof until the value of such improvements are paid for. And if the county court, or trustees of any seminary, or any other person claiming such improvement by virtue of a seminary claim, shall, for the space of six months after report made, fail or refuse to pay for the value of the improvements, agreeable to the assessment of the commissioners by this act directed to be appointed, such failure or refusal shall be considered and deemed a relinquishment of their claim, and the land vacant and subject to the disposal of the commonwealth.

*Settler to retain possession until paid.* Sec. 4. *And be it further enacted*, That no entry or survey shall be made or patent issue for any less quan-

tity of seminary lands, than one hundred acres in one survey; nor shall any grant be issued to any other person or persons, other than to the trustees.

1811.

CHAPTER CCCLXXI.

*An ACT for the appointment of Commissioners to sell part of a Lot of Ground in the Town of Winchester, in the County of Clarke, and for other purposes.*

Approved February 4, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That Thomas Scott and John Ward, of the county of Clarke, gentlemen, be and they are hereby appointed commissioners, with full power and authority to amend the plan of the town of Winchester, in the said county, by extending Short street across Market street and through the jail lot to Water street. Commissioners appointed.  
Powers.

Sec. 2. *And be it further enacted,* That the said Thomas Scott and John Ward are hereby further empowered, as commissioners aforesaid, to expose to sale, on a credit of six months, all that part of the jail lot which may be on the lower side of the said Short street, when the same is extended across to Water street, by giving two months notice by advertising on the court-house door of the said county, on the first day of two several courts prior to the day of sale, of the day and hour on which the said sale shall commence and be made. And they are further authorised to take bond and security for the amount of the purchase money, of the purchaser or purchasers, payable to the county court; and which money may be collected by motion in the circuit court of said county, by giving ten days notice; and which, when collected, shall by the county court be applied to the use of said county. Further authority given them.

Sec. 3. *Be it further enacted by the authority aforesaid,* That hereafter the trustees of the town of Winchester, or a majority of them or their successors in office for the time being, shall be and are hereby invested with full power and authority to assess, levy and collect, on the property within said town, real or personal, any sum not exceeding the sum of five hundred dollars in each year. The mode of assessment, and the species of property on which the said assessment shall be made, Power of the trustees.  
To levy taxes.

1811. to be prescribed by the by-laws which may be enacted by the said trustees ; which said sum assessed and levied, shall be subject to appropriations by the said trustees, towards the improvement and benefit of said town.

*Sec. 4. And be it further enacted by the authority aforesaid,* That the said trustees shall appoint a town collector, as often as shall be necessary, who shall enter into bond and security, in the penalty of eight hundred dollars, payable to the trustees and their successors, conditioned to collect and account for the taxes put into his hands, by the time said trustees shall appoint in their by-laws. It shall be the duty of said collector, so soon as the lists of property shall be delivered to him by the direction of said trustees, to proceed to collect and receive from the owners of such property so taxed, the amount of taxes so due ; and on failure or refusal to pay, the said collector shall possess all the powers to distrain and sell, as sheriffs do in collecting the revenue tax of this commonwealth ; and the said collector shall make distress and sale, in case of failure or refusal, under the same rules and regulations as govern sheriffs in case of failure or refusal to pay revenue tax ; and the said collector shall be entitled to the same fees for distress as sheriffs are.

*Sec. 5. And be it further enacted by the authority aforesaid,* That the trustees aforesaid may give the town collector such commission for collecting the taxes of said town, as they may adjudge proper.

*Sec. 6. And be it further enacted,* That the town collector shall account with and pay to the treasurer to be appointed by the trustees, the amount of taxes due, for which he has received the lists aforesaid, after deducting his insolvent lists, on or before the day to be appointed by a by-law of the trustees as aforesaid ; which day shall be mentioned in the condition of the collector's bond : on failure whereof, the trustees may prosecute a suit on said bond, in the circuit court of Clarke county, or other court having jurisdiction in similar cases, and shall be entitled to recover of the said delinquent collector and his security or securities, the full amount of the taxes due, agreeably to the lists delivered to said collector, without allowing any deduction for delinquencies, together with fifteen per centum damages on the amount of the sum recovered, and costs of suit ; on

To appoint a collector, who shall give bond.

Condition.

Duty of collector.

His fees.

Allowance.

Collector to account to the trustees.

On failure, taxes may be recovered by motion in circuit court.



## XX. YEAR OF THE COMMONWEALTH.

381

which judgment, execution may be issued with an endorsement that "no security is to be taken."

1811.

Sec. 7. *And be it further enacted by the authority aforesaid,* That the said town collector shall and may collect the arrearages of taxes for any year or years, during five years after they become.

### CHAPTER CCCLXXII.

*An ACT for the benefit of Phillips and Samuel Caldwell.*

Approved February 4, 1812.

They had, in 1801, obtained leave to locate 1000 acres of land, for the purpose of making salt; it was found, on trial, not likely to answer that purpose; they were by the original act to have paid one dollar per acre; an intermediate act had reduced the price; this act placed them on the footing of actual settlers, both as to present and subsequent laws.

### CHAPTER CCCLXXIII.

*An ACT for the relief of Joseph Chaffin and others.*

Approved February 4, 1812.

They were proprietors of Virginia land claims, some of which had not been surveyed until after the time for executing such surveys had expired, and others had not been surveyed at all: this act legalised the surveys made, as far as the commonwealth was interested, and permitted the others to be made.

### CHAPTER CCCLXXIV.

*An ACT more effectually to suppress the practice of Duelling.*

Approved February 4, 1812.

WHEREAS the commonwealth have repeatedly sustained great and irreparable injury, in the loss of some of her best and most valuable citizens; inroads have been made in private families; their peace, happiness, and domestic felicity destroyed, by the present inhuman practice of duelling; a practice contrary to the precepts of morality, religion, and civil obligation, which originated in a barbarous age, fostered by savage policy, and only perpetuated in this enlightened era, by mistaken ideas of honor: for remedy whereof,

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky,* That to all officers in and belonging to the legislative department of government, who shall hereafter be elected, before they enter upon the discharge of the duties of their aforesaid office, the

Legislative department.

1811.  
Oath.

following oath, in addition to what is now by law directed, shall be administered to them: "That he or they (as the case may be) have neither directly nor indirectly, given, accepted or knowingly carried a challenge, to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, since the first of April 1812; and that he or they will neither directly nor indirectly give, accept or knowingly carry a challenge to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, during their continuance in office." And upon their refusing to take the oath aforesaid, their office shall be vacated, and shall be filled in the same manner as if they had resigned.

Executive department.

Sec. 2. *Be it further enacted*, That all officers in the executive department of government, as well civil as military, who shall hereafter be appointed and commissioned, shall, in addition to the oath already to be administered, take the oath prescribed in the first section of this act. And those who are not now directed by law to be sworn, shall also, before they enter upon the discharge of the duties of their aforesaid office, take the aforesaid oath. And upon their failing or refusing to take the aforesaid oath, their office shall be vacated, and filled in like manner as if they had resigned.

Judicial department.

Sec. 3. *Be it further enacted*, That all officers in the judicial department of government, who shall hereafter be appointed and commissioned, shall, before they enter upon the discharge of the duties of their aforesaid office, take the oath prescribed in the first section of this act. And upon their failing or refusing so to do, their office shall be vacated and filled in like manner as if they had resigned.

Attorneys at law

Sec. 4. *Be it further enacted*, That to all and every person who may hereafter desire to practise as an attorney or counsellor at law, in any court of this commonwealth, in addition to the oath already by law to be taken by them, the oath prescribed in the first section of this act, shall be administered to them. And upon their failing or refusing to take said oath, they shall not be permitted to practise as an attorney or counsellor in said court.

Certificate of oath to be recorded,

Sec. 5. *Be it further enacted*, That each and every one who by virtue of the provisions of this act, shall

administer an oath or oaths, to any person or persons, 1811.  
 shall return a certificate of such oath to the clerk of the  
 county court where such oath is administered, within When.  
 thirty days; to be by him recorded in a book to be kept  
 for that purpose.

## CHAPTER CCCLXXV.

*An ACT to amend the Law of proceedings in Civil Cases.*

Approved February 4, 1812.

The following fragments of Virginia acts, were supposed to have been either repealed or superseded, at the time the former volumes were published; but, on examination and reflection, I am now inclined to believe they still remain in force.

SESSION ACTS OF 1785, PAGE 41.

"If any person taken in execution, be delivered by privilege of either house of general assembly, so soon as such privilege ceaseth he shall return himself a prisoner in execution, or be liable to an escape."

SESSION ACTS OF 1788, PAGE 35.

"An execution writ, or other process, appearing to be duly served in other respects, shall be deemed good, although it be not directed to any sheriff."

"If a *disfringis* issue in detinue, the court, for good cause shewn, may direct it to be superseded so far as respects the specific thing, and to be executed for the alternative price or value only, if fixed by the judgment, or if the same shall afterwards be fixed by a writ of enquiry."

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That in all actions for trespasses committed on land, and every other species of action or suit, deemed and considered local at common law; it shall be lawful to issue a writ or writs of *capias ad respondendum*, from the clerk's office of the county where the injury was committed, against the defendant or defendants, to any county or counties in this commonwealth; but in declaring in every such action, the plaintiff shall not set forth any matter or thing, which might be the cause of any transitory action. In local actions writs may issue to any county.

Sec. 2. *Be it further enacted by the authority aforesaid*, That in case the original writs in the first section mentioned, should not be executed, it shall be lawful to issue such other process to any county in this commonwealth, as are usually issued in such actions, to enforce the appearance of such defendant or defendants. And alias and pluries writs.

Sec. 3. *And be it further enacted by the authority aforesaid*, That in all and every species of suit or action, commenced in any of the courts of this commonwealth, having jurisdiction thereof, if the defendant or defendants shall remove out of the county where the action Proceedings where defendant removes.

1811. was commenced, and the same shall be certified by the sheriff or other officer to whom the process was directed, it shall be lawful to issue an *alias* writ, and every other legal process necessary to enforce the appearance of such defendant or defendants, directed to the sheriff or other proper officer, of any county in this commonwealth.

*Sec. 4. Be it further enacted,* That in every species of personal actions, where there are more than one defendant, the plaintiff commencing his action in the county where either of them reside, may issue any writ or writs, directed to any county where the defendants, or any of them, may be found: *Provided*, that should a verdict not be found against the defendant or defendants resident in the county where the action is commenced, judgment shall not be rendered in such action.

*Sec. 5. Be it further enacted by the authority aforesaid,* That hereafter no species of actions for personal injuries, shall cease or die with the person, except actions for assaults and batteries, slander, criminal conversation, and so much of the action for malicious prosecution as is intended to recover for the personal injury; but that for any other injury than those herein excepted, an action may be brought and maintained by executors or administrators, or against executors and administrators, in like manner with causes of action founded upon contract. And upon the decease of either plaintiff or defendant, to any actions which, by the provisions of this section, will not die with the person, it shall be lawful for such action to be revived in the name of the executors or administrators of the deceased, in the same manner, subject to the like proceedings, as in cases which heretofore survived to the executors or administrators of the deceased, may be.

*Sec. 6. Be it further enacted by the authority aforesaid,* That in all cases where several persons are sued as joint obligors in the same writing, or as joint and several obligors, and the sheriff or other officer shall return on any process issued against any of the defendants, that such defendant "is not an inhabitant of his county," the plaintiff may proceed to judgment against the other defendant or defendants, without any further proceedings against the defendant or defendants so returned "not found."

Sec. 7. *Be it further enacted by the authority aforesaid,* That where any person is sued upon a bond or other writing, by an assignee thereof, it shall not be lawful for the defendant or defendants to require of the plaintiff or plaintiffs, proof of the assignment or assignments, unless the defendant or defendants shall annex to the plea, denying such assignment or assignments, an affidavit, stating that such defendant or defendants verily believes that some one or more of such assignments was forged, or make an oath to the same effect in open court at the time of filing such plea.

1811.

Assignments of bonds, &amp;c.

Sec. 8. *Be it further enacted by the authority aforesaid,* That all writings hereafter executed without a seal or seals, stipulating for the payment of money or property, or for the performance of any act or acts, duty or duties, shall be placed upon the same footing with sealed writings, containing the like stipulations; receiving the same consideration in all courts of justice; and to all intents and purposes having the same force and effect, and upon which the same species of action may be founded, as if sealed.

Unsealed writings put on the same footing as sealed writings.

Sec. 9. *Be it further enacted by the authority aforesaid,* That hereafter every charge of incest, fornication or adultery, made by any citizen of this commonwealth, against one of the female sex, shall be placed on the same footing as other charges of a criminal nature, for which an action will lie according to the principles of the common law; and that all and every person or persons for whom an action would lie for the speaking of scandalous words, may have and maintain an action of slander, for the speaking of words containing a charge of the commission of the offences aforesaid, or any of them, subject to the like principles, rules and regulations as are observed in other actions for slanderous words.

Charges of fornication, &amp;c. put on the same footing as charges of a criminal nature.

Sec. 10. *Be it further enacted by the authority aforesaid,* That when any sheriff or other officer may hereafter arrest any person or persons, by virtue of any process for a contempt or contempts to any of the courts of this commonwealth, it shall be the duty of such sheriff or other officer to admit the person or persons so arrested to bail for their appearance, if good bail is offered; and he shall bind the person so arrested in the sum endorsed on such writ.

Contempts.

Sheriff may admit the party in contempt to bail.

1811.

Court shall order bail.

Sec. 11. *Be it further enacted by the authority aforesaid,* That the several courts in this commonwealth, when awarding any process for a contempt or contempts, shall direct by their order in what sum the defendant shall be bound for his appearance, and what number of sureties shall be bound with such defendant or defendants; and the clerk of such court shall, by endorsement on the writ, certify the same to the sheriff or other officer.

In failure of the party to appear, *scire facias* may issue, &c.

Sec. 12. *Be it further enacted by the authority aforesaid,* That if the person recognised or bailed to appear under any attachment for contempt, fails to appear at the return day of such attachment, the same proceedings by writ of *scire facias*, and so on to judgment, as are had and prosecuted on recognizances in other cases, shall be had and taken; and the money collected by virtue of any such judgment, shall go to the use of the commonwealth.

Money, how applied.

Person arrested failing to give bail, may be removed by the sheriff to the jail of the county from whence the process issued.

Sec. 13. *Be it further enacted by the authority aforesaid,* That where any sheriff or other officer shall arrest any person or persons by virtue of any process for any contempt, issued out of any of the courts of this commonwealth, and the person so arrested shall fail or refuse to give bail as herein directed, it shall be the duty of such sheriff or other officer, and he is hereby vested with full power and authority, forthwith to remove the person or persons so arrested, to the jail of the county from whence the process issued; and it shall be the duty of the jailor of such county forthwith to commit such person or persons to close prison.

Sheriff's fee.

How paid.

Sec. 14. *Be it further enacted by the authority aforesaid,* That the sheriff executing any such process for a contempt, shall be entitled to sixty-two and a half cents for the arrest, and five cents per mile for travelling to and returning to execute such process, to be paid out of the public treasury, upon the order of such court and the warrant of the auditor, if the person prosecuted shall clear the contempt charged; but if not, to be paid by the person so in contempt; and for which, and all other costs incident to such prosecution, the court before whom the same is brought shall enter up judgment, and execution shall issue therefor as in other cases.

Jailors may take special bail and

Sec. 15. *Be it enacted,* That the jailors in this commonwealth are authorised to take bond or bonds for the

prison rules (taking such bond to himself) and special bail, where any person may be imprisoned for want of such bail, under the same regulations that sheriffs are now empowered by law, and be entitled to the same fees and emoluments therefor: *Provided*, that sheriffs shall in no case be responsible for the conduct of jailors: *Provided also*, that any jailor taking bond for the prison bounds, shall, whenever required, assign the same to the creditor at whose suit imprisonment was had; or to his, her or their legal representative. And where any jailor shall be committed to jail, it shall be the duty of the sheriff of the county where such commitment shall take place, to perform all the duties which are enjoined by law on jailors, in relation to defendants in custody.

1811.

bonds for the prison rules.

Proviso.

When jailor is committed, the sheriff to act as jailor.

Sec. 16. *Be it further enacted*, That the several jailors in this commonwealth, shall, within six months after the passage of this act, execute in their county court, bond with one or more approved securities, in at least the sum of one thousand dollars, and as much more as the said court may deem proper, payable to the commonwealth, conditioned for the faithful discharge of the duties of the office of such jailors; and which may be put in suit by any person injured by the acts of any such jailor, and shall not be discharged until the whole penalty is recovered.

jailors to give bond hereafter.

Condition.

May be put in suit.

Sec. 17. *Be it further enacted*, That so much of any act as makes the county chargeable for the support and maintenance of debtors committed to prison, for the first twenty days, be and the same is hereby repealed: *Provided*, in all cases where the defendant may be insolvent, or unable to pay the same, the plaintiff shall be liable therefor.

County discharged from support of debtors committed to jail.

Proviso.

Sec. 18. *Be it further enacted*, That if any female plaintiff or complainant, in any suit in law or equity, shall marry pending the same, the marriage may be entered on the records of the court where the suit is depending, and the husband made a party thereto; whereupon the suit shall progress according to law.

When a person marries during pendency of a suit, to be entered on record.

Sec. 19. *And be it further enacted*, That if any sheriff or other officer, to whom any writ is directed requiring bail, shall fail to take bail, the plaintiff or plaintiffs in the action shall be entitled, if sufficient bail is not put in previous to the trial, if he or they succeed in the action, to have the judgment entered, as well against the sheriff

Officer required to take bail, and fails to do, how liable.

1811. or other officer to whom the said writ is directed, as against the defendant or defendants.

Certain act re-  
pealed.

Sec. 20. *Be it further enacted*, That so much of the fifteenth section of the act entitled "an act to regulate proceedings in suits at law and in chancery," passed in 1810, as prescribes that if the suit be brought previous to the filing of the declaration, that the plaintiff or plaintiffs shall pay all costs previous to the filing of it, shall be and the same is hereby repealed.

In an action on  
an assignment,  
condition need  
not be set forth

Sec. 21. *Be it further enacted*, That it shall not be necessary in an action upon an assignment of any instrument of writing, assignable by law, to set forth in the declaration or petition, the consideration upon which such assignment has been made.

Ex'r. & adm'r.  
not to be liable  
only for costs in  
certain cases.

Sec. 22. *Be it further enacted*, That any bond hereafter executed by an executor or administrator, to make a writ of error a *supersedeas*, or upon an appeal, shall not make the executor or administrator liable out of his own estate, any further than for costs upon a deficiency of assets; and the officer taking any such bond, shall prepare the same accordingly.

#### CHAPTER CCCLXXVI.

*An ACT to provide for the ascertainment of the Boundary Line between this State and the State of Tennessee.*

Approved, February 4, 1812.

Recital.

WHEREAS it is desirable to have the boundary line between this state and the state of Tennessee run and marked according to its true position; and whereas the general assembly of the state of Tennessee, have passed a resolution at their last session, authorising the executive thereof to appoint two commissioners, to cause to be run and marked the boundary line between this state and the state of Tennessee: wherefore,

Executive to  
appoint com-  
missioners.

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That the governor of this state be, and he is hereby authorised to appoint two fit persons as commissioners, who shall be and they are hereby authorised to meet the commissioners to be appointed on the part of the state of Tennessee, under the resolution aforesaid; and then proceed to run and mark said line according to its true position, as it is established by the charter of King Charles II. and recognised by

Their duty.



the twenty-fifth section of the declaration of rights in the constitution of the state of North Carolina ; and also recognised by the thirty-second section of the declaration of rights in the constitution of Tennessee : Beginning on the top of Cumberland mountain, at thirty-six degrees and thirty minutes north latitude, when accurately taken ; and from thence to run west a right line in thirty-six degrees and thirty minutes north latitude, so far as not to run into the lands claimed by the Indians.

1811.

Sec. 2. *Be it further enacted*, That the said commissioners are empowered to employ a surveyor, at three dollars and fifty cents per day, and chain carriers and markers, at one dollar per day each ; and cause the said line to be run and marked, between this state and the state of Tennessee, agreeable to the provisions of this act.

Surveyors, &c.  
to be employed.

Sec. 3. *Be it further enacted*, That the commissioners so to be appointed on behalf of this state, are authorised to confer with the commissioners on behalf of the state of Tennessee, as to the most advisable plan for quieting the titles to land which may be claimed by the citizens of either state, between the boundary line and the line commonly called Walker's line.

Conference of  
commissioners  
on conflicting  
titles to land.

Sec. 4. *Be it further enacted*, That if the commissioners on the part of the state of Tennessee, shall fail or refuse to act and proceed with the commissioners to be appointed on the part of this state ; or if the executive of said state of Tennessee should not appoint such commissioners, nevertheless the commissioners so to be appointed on the part of this state, may proceed, (unless forbidden by the executive of the state of Tennessee) upon proper observations of the true point and direction of thirty-six degrees and thirty minutes north latitude, to cause the said boundary line to be run and marked, so far as not to run into the lands at present claimed by the Indians.

Commissioners  
to proceed and  
run the bounda-  
ry unless for-  
bidden.

Sec. 5. *And be it further enacted*, That said commissioners shall, for the time they shall be necessarily employed in said service, each receive the sum of five and an half dollars per day ; and that upon the governor's certificate of their appointments as commissioners, and of their being ready to proceed to the discharge of the duties herein prescribed, they shall be entitled to draw

Compensation  
for their servi-  
ces.

How paid.

1811. a sum from the treasury of this state, for which the auditor is hereby required to issue his warrant on the treasurer, not exceeding six hundred dollars, for the payment in part for a surveyor, chain carriers, markers, and furnishing the requisite provisions; which latter shall be furnished at the expence of the state.

Commissioners to report their proceedings and expences to the next legislature. Sec. 6. *And be it further enacted*, That it shall be the duty of the commissioners to report their proceedings, together with an account of the necessary expenses of said services, to the next session of the legislature.

## CHAPTER CCCLXXVII.

*An ACT for the better regulation of the Town of Russellville.*

Approved February 4, 1812.

Power and duty of trustees to levy taxes on the inhabitants of the town. Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the trustees of the town of Russellville, and their successors, or a majority of them, shall, for the purpose of fulfilling and executing their duties and powers as prescribed by law, have authority to levy and impose taxes on all property, real and personal, within said town, (wearing apparel, household furniture and implements of trade and profession only excepted) and that said taxes shall be apportioned among the owners of said property, according to its value: *Provided*, that the taxes levied on said property shall not exceed the sum of four dollars per annum, on any one person.

Proviso. Sec. 2. *Be it also enacted*, That the said trustees and their successors, or a majority of them, shall have power annually to impose a poll tax not exceeding one dollar, on all persons entitled by law to vote for trustees of said town.

Authorized to levy a poll tax. Sec. 3. That the trustees of said town and their successors, or a majority of them, may, at any time they shall deem it necessary, appoint some fit person residing in said town, as a commissioner for the purpose of procuring lists of all such persons and property as are by law subject to taxation by said trustees; that said commissioner, before he begins to exercise the duties of his office, shall make oath before some justice of the peace, "that he will faithfully execute the office of commissioner, agreeable to law, and according to the best of his

To appoint a commissioner to take in persons & property subject to taxation.

To take an oath

abilities, without partiality." He shall then without delay proceed to execute the duties of his said office; calling on each person residing within the limits of said town, or holding any lot therein, or his or her agent, if any such there be, for a written list of his or her property; which being distinctly read over by the commissioner to the person delivering the same, he or she shall make oath or affirmation, which the commissioner is hereby authorised to administer, "that such list contains a true and perfect account of every species of property belonging to him, or in his possession, subject to taxation by the trustees, on the tenth day of March last; and that no contract, change or removal whatever, of property, has been made or entered into, or any other mode devised or used in order to evade the payment of taxes." And the said commissioner shall adjust the value of the property with the owner thereof, and note the amount of such valuation on such list; and in case of neglect or refusal on the part of the person so called on, either to give a list of his or her property as aforesaid, or to adjust the value thereof with the commissioner, it shall be the duty of the commissioner to make out a list of the property of such delinquent from the best information he can procure, and to fix the value thereof himself; and in like manner the said commissioner shall make out lists, and affix the value of all property in said town subject to taxes, the owners whereof are non-residents of said town, and have no known agent therein; which list, with the valuation aforesaid, shall thereafter in convenient time, at farthest in the space of forty days from the time said commissioner is duly notified of his appointment, be returned by the commissioner aforesaid, to the board of trustees, or to the chairman thereof, that said trustees may be enabled thereby to lay and apportion their taxations according to law: *Provided however*, that if any person shall think himself or herself aggrieved by such valuation, he or she may apply to the board of trustees thereupon, who shall, if they see cause, reduce the estimate or valuation so made by the commissioner. And said commissioner shall be allowed two dollars per day while he is employed under this act, to be paid by the trustees, out of the money collected as tax. And if any person liable to the payment of tax, shall give or deliver to the commis-

1811.

His duty and power.

To administer an oath.

Provided.

Commissioner's allowance.

How paid.

Penalty on persons giving in a

1811. *fraudulent list to commissioner How to be recovered and applied.* sioner a false or fraudulent list of property subject to taxation, he or she shall be liable to a fine of ten dollars, to be sued for in the name of and recovered by the trustees, or a majority of them, in the manner debts of like amount are recoverable by law, and to be applied to the use of said town.

*To appoint a collector.* *His power and duty.* *His allowance.* *Penalty on failing to make collections.* *How, where, & by whom recoverable and applied.* *Proviso.* Sec. 4. And when the trustees have laid and apportioned the tax, they shall appoint a collector, whose duty it shall be to collect and account for the tax of said town, within three months after a list of the same shall be put into his hands by said trustees. And if any person shall fail or refuse to pay the same, the said collector shall have power to make distress, and to sell property, upon giving ten days notice at the court-house door in said town, of the time and place of such sale. And the said collector, at the expiration of the said three months, shall deliver the money so collected to the trustees, or any person whom they may appoint for that purpose, deducting thereout ten per cent. for his services in collecting said tax. And if said collector does not collect and pay over such tax according to the provisions of this act, on ten days previous notice being given, a judgment may be recovered against said collector and his securities, or any one or more of them, by the trustees or their successors, in the county court, for the full amount put into his hands to collect, and execution awarded thereon; on which execution the clerk of said court shall endorse "no security of any kind to be taken:" *Provided however*, said collector shall be allowed such credit for insolvents, as the said court may judge him entitled to.

*Further duty of collector of tax.* Sec. 5. That the said collector, at the time he receives the list of taxes to be by him collected, shall also be bound to receive from said trustees lists of all arrearages of taxes now accrued, or which may hereafter accrue, and to collect and account for the same in the same manner as other taxes are.

*Collector to give bond and security.* Sec. 6. That the said collector shall within five days after notice of his appointment, and before he proceeds to act, enter into bond with such security as may be approved of by the trustees, with a penalty in double the sum to be by him collected, payable to the said trustees or their successors in office, with condition for the faithful execution of his office.

Sec. 7. That if any person appointed a commissioner or collector, shall fail or refuse to act, he or she shall forfeit and pay to the trustees, for the use of said town, a fine of fifteen dollars, recoverable by said trustees or their successors, in the same manner with other debts of the same amount.

1811.

Penalty on any person failing or refusing as commissioner or collector.

Sec. 8. That the said trustees and their successors, or a majority of them, may appoint an overseer of the streets of said town, to keep the same in good order and repair; and for that purpose said overseer shall be authorised to call on all the free male inhabitants of said town, above the age of twenty years, to work on said streets; and any person so called on and failing to attend and work, or furnish a substitute, shall forfeit and pay to the trustees, for the use of the said town, one dollar, recoverable by the trustees in the same manner which debts of the same amount are recoverable.

To appoint an overseer of the streets.

His duty and powers.

Penalty on persons failing to work on streets.

Sec. 9. *Be it further enacted,* That the trustees of the said town, their successors, or a majority of them, shall be and they are hereby authorised and empowered, under such rules and regulations as they may adopt, to compel the owners of lots on Main street, in said town, for such an extent as they may deem proper, to make a pavement of the width of ten feet, and along the whole front thereof; and if any order of the trustees to that effect shall be disobeyed, the said trustees are authorised to cause such pavement to be made: and all sums necessarily expended by them in such work, together with twenty per cent. damages thereon, may be recovered by said trustees from such delinquent owner or owners respectively, in the same courts, form and manner in which other demands of the same amount are recoverable.

Power of trustees.

Penalty on persons disobeying powers hereby granted.

Sec. 10. That whenever the owners of four-fifths of the ground on any street, shall petition the said trustees to have such street paved, they shall be and are hereby authorised and empowered to compel the pavement of the same, in the manner before provided.

Further powers of the trustees.

Sec. 11. All acts or parts of acts, within the purview of this, shall be and the same are hereby repealed.

## DECEMBER SESSION,

1811.

## CHAPTER CCCLXXVIII.

*An ACT giving Interest on Judgments for Damages in certain cases.*

Approved February 7, 1812.

*BE it enacted by the general assembly of the commonwealth of Kentucky, That every judgment or decree hereafter rendered or pronounced, founded upon contract, sealed or unsealed, expressed or implied, for the payment of money or property, that shall be delayed in the execution, by proceedings on the part of the defendant or defendants, by injunction or writ of error coram vobis, before a circuit court, or by writ of error with a supersedeas, or an appeal to the court of appeals, shall, in the event of the judgment or decree being affirmed, bear legal interest from the rendition of the judgment or pronouncing the decree, until paid; and it shall be the duty of the clerk of the court in which the judgment was rendered, or decree pronounced, to endorse on the execution that the same is to bear legal interest until paid.*

## CHAPTER CCCLXXIX.

*An ACT for the relief of Daniel Trabue.*

Approved February 7, 1812.

He was sheriff of Adair, and had, as such, in the year 1808, paid into the treasury 20 dollars more than was demandable of him, owing to a mistake in the commissioner's books. This act provided for a repayment.

## CHAPTER CCCLXXX.

*An ACT to recover Monies improperly drawn from the Treasury, by a Deputy Sheriff of Christian County.*

Approved February 7, 1812.

The attorney for the commonwealth, of Christian circuit court, was directed to bring suit for the recovery of it.

## CHAPTER CCCLXXXI.

*An ACT for the benefit of Jesse Knighten.*

Approved February 7, 1812.

He was an object of charity, owing to his indigence, old age and infirmity. This act gave him 92 acres of land, in Muhlenburg county.

## CHAPTER CCCLXXXII.

1811.

*An ACT for the benefit of the heirs of John Breckenridge, deceased.*

Approved February 7, 1812.

They were mostly infants, and one *feme covert*, owning considerable of lands and subject to a number of contracts of their ancestor, respecting lands. This act authorised the Fayette circuit court to appoint trustees to manage the business.

## CHAPTER CCCLXXXIII.

*An ACT concerning the Town of Louisville, in Jefferson County.*

Approved February 7, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That hereafter the trustees of the town of Louisville, or a majority of them or their successors in office for the time being, shall be and are hereby invested with full power and authority to assess, levy and collect, on the property within said town, real or personal, any sum not exceeding the sum of two thousand dollars, in each and every year. The mode of assessment, and the species of property on which the said assessment shall be made, to be prescribed by the by-laws which may be enacted by the said trustees; which said sum so assessed and levied, shall be subject to appropriations by the said trustees, towards the improvement and benefit of said town.

Trustees may levy a tax not exceeding 2000 dollars.

Sec. 2. *Be it further enacted*, That so soon as the lists of property shall be delivered to the town collector, by the direction of the said trustees, the said town collector shall proceed to collect and receive of the owners of such property so taxed, the amount of taxes so due; and on failure of payment, the said town collector is hereby authorised to seize or distrain any property, real or personal, of any person or persons so failing to pay, sufficient to satisfy the respective amount of taxes due, and costs of distress, under the following rules and regulations, to wit: First—Whenever the said town collector shall seize or distrain any personal property, he shall, after affixing a notice of the time and place of sale to the court-house door, market-house, and some public house in said town, ten days previously to the day of sale appointed by him, proceed to sell the same, or so

Regulations respecting collecting tax.

1811.

much as will satisfy the tax due and costs of distress, at some public place, to the highest bidder, for cash. Secondly—Whenever, on deficiency of personal property of the person in arrear for taxes within the precincts of said town, it shall be necessary to sell any lot, house, or any other real property, the owner of which resides within the limits of said town, it shall be the duty of said town collector to affix to the court-house door, market-house, and some public house in said town, a notice of the day and place of sale appointed by him, at least twenty days previously to the day of sale; stating therein the number of the lot, house or other real property so proposed to be sold, the owner's name, and the amount of tax due: whereupon the said town collector, on the day and at the place so assigned in the said notice, if the taxes have not in the mean time been paid, shall proceed to sell the said lot, house, or other real property, or as much thereof as will be sufficient to satisfy the tax so due and costs of distress. Thirdly—Whenever it shall be necessary as aforesaid to sell any lot, house or other real property within said town, the owner of which does not reside within the limits of said town, whether he be a resident or non-resident of this state, or if the owner is unknown, it shall be the duty of the town collector to cause to be inserted in the newspaper published at Louisville, or other public newspaper, an advertisement specifying the day and place of sale, the number of the lot, house or other real property proposed to be sold, the owner's name, if known to the collector, and the amount of tax due, six weeks successively before the day of sale, to be appointed by the said collector: whereupon, on the day and at the place (which shall be a public place) so appointed for the said sale, the said town collector, if the said taxes have not been previously paid, shall proceed to sell the said lot, house, or other real property, so proposed to be sold, or so much thereof as will satisfy said tax and costs of distress, to the highest bidder, for cash.

Sec. 3. *Be it further enacted*, That in all cases where any lot, house, or other real property, or parts thereof, whether of persons resident or non-resident within the limits of said town, shall be sold, the town collector is hereby authorised, upon the payment of the purchase money, to execute to the purchaser or purchasers a deed

Respecting lots  
fold for tax.



or conveyance of the lot, house, or other real property, or parts thereof so sold; which deed or conveyance shall effectually, in law and equity, transfer to and vest in the said purchaser or purchasers, all the right, title and interest in and to the said lot, house, or other real property, or parts thereof so sold, of the person charged with taxes on account of the said lot, house, or other real property, or parts thereof so sold as aforesaid.

1811.

Sec. 4. *Be it further enacted*, That the said town collector shall account with and pay to the treasurer to be appointed by the said trustees, the amount of taxes due, for which he has received the lists aforesaid, after deducting his insolvent list, on or before the day to be appointed by a by-law to be enacted by said trustees; and which day shall be mentioned in the condition of the collection bond: on failure whereof, the said trustees may prosecute a suit on said bond in the circuit court of Jefferson county, or other court having jurisdiction in similar cases, and shall be entitled to recover by a verdict and the judgment of said court, of such delinquent collector and his securities, the full amount of the taxes due, agreeably to the list delivered to the collector, without allowing any deduction for delinquents, unless the trustees agree to receive the same, together with fifteen per centum damages on the amount of the sum recovered, and costs of suit; on which judgments executions shall be issued, with an endorsement that "no security shall be taken."

Respecting the town collector.

Sec. 5. *Be it further enacted*, That the said trustees shall have full power and authority to enact by-laws which may be necessary; prescribing the manner of conducting all sales of lots, houses, and other real property; designating what parts of lots, houses or other real property shall be sold; and in general, to enact such by-laws as they may deem necessary on that subject, not inconsistent with the constitution of this state.

Power of trustees to enact by laws.

Sec. 6. *And be it further enacted*, That the town collector shall and may collect the arrearages of taxes for any year or years, during five years after they are so due, proceeding agreeably to the provisions of this law. And whenever the trustees shall or may, for any causes whatever, fail to assess or levy the taxes hereby authorised to be levied or assessed in any year, the said trustees, or their successors, are hereby authorised to assess

Arrearages of taxes to be collected.

1811. and levy the taxes of said year so omitted, in any other year thereafter; and the collector shall proceed to distrain, sell and collect the taxes so levied and assessed, and shall account for and pay the same, as is before directed.

All acts and parts of acts, contrary to the provisions of this act, shall be and are hereby repealed.

#### CHAPTER CCCLXXXIV.

*An ACT establishing an additional Term in the Fayette Circuit, and for other purposes.*

Approved February 8, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That in addition to the chancery term allowed in the circuit of Fayette, an additional term of twelve juridical days shall be held, commencing on the second Monday in August in each year, if the business thereof shall require it.

Sec. 2. *And be it further enacted,* That it shall and may be lawful for the circuit court for the county of Mercer, at the next June term, to sit eighteen juridical days, if the business should require it: *Provided however,* that the attendance of the circuit judge for the last six days of such term, shall be dispensed with.

#### CHAPTER CCCLXXXV.

*An ACT to repeal the several acts concerning the Inspection of Tobacco in the Town of Louisville.*

Approved February 8, 1812.

*BE it enacted by the general assembly of the commonwealth of Kentucky,* That so much of any act or acts which provide for the establishment of an inspection of tobacco in the town of Louisville, shall be and the same is hereby repealed: *Provided nevertheless,* that the present proprietor shall be and he is hereby subject to all the pains, penalties and provisions established by law, for the safe keeping and delivery of any tobacco now deposited in his ware-house, or which may be deposited previous to the first of March next; and that he shall receive the same rents and emoluments heretofore allowed.

This act shall commence and be in force from and after the first day of March next.

## CHAPTER CCCLXXXVI.

1811.

*An ACT to suppress Private Associations for the purpose of Banking.*

Approved February 8, 1812.

WHEREAS the advantages arising to the good people of this commonwealth, by the establishment of a state bank, may be defeated, and the revenue of this state greatly impaired by the establishment of private associations for the purpose of banking, if the same be tolerated by law : for remedy whereof,

Preamble.

Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky,* That if any person shall, within this commonwealth, act as an officer, servant, agent or trustee, to any bank or monied association, except a bank incorporated by law of this commonwealth, he shall for every such offence forfeit and pay the sum of ten thousand dollars.

No person shall act as servant, agent or trustee of any private bank or monied association unauthorized by law.

Sec. 2. Every company or association that shall lend money, and shall issue by their officer or officers, or by any other person and persons, bonds, notes, or bills, payable to bearer, or payable to order, and endorsed in blank ; or use other shift or device, whereby the bonds, notes or bills given by such company or association, or on their behalf, pass or circulate by delivery, shall be taken and deemed a bank within this act.

What declared to be such a bank or association.

Sec. 3. Every person who shall act as a president, cashier, clerk, or director to any such bank ; or shall in any respect assist in the discounting of paper, or lending money for such bank ; or in paying out or receiving money for such bank ; or in any manner intermeddle for the benefit of such bank, with its concerns ; and every person whose hand writing shall appear on the bond, bill, note or contract of such bank, whether as the drawer thereof, a witness or endorser, or otherwise, shall be deemed and taken an officer of such bank, within the meaning of this act.

Who shall be considered as officers of such an institution.

Sec. 4. If any person shall offer in payment the bond, bill, note or contract of any such bank, payable to bearer, or to order, and endorsed in blank, he shall for such offence forfeit three times the amount of such bond, bill, note or contract. And if any person shall pass or circulate the bond, bill, note or contract of any such bank by delivery, without endorsing the same, he or she so

Penalty on persons offering their notes in payment.

Penalty on failing to endorse the notes, &c.

1811. offending; shall forfeit and pay four times the amount of such bond, bill, note or contract.

Penalties imposed, how recovered and appropriated.

Sec. 5. All fines and forfeitures imposed by this act, may be recovered by action of debt, or by indictment or presentment of the grand jury; and shall go, one half to the informer, where action is brought, and the other half in aid of the public revenue of this state. But where the same is recovered by indictment or presentment, the whole shall be to the use of the commonwealth.

Mode of proceeding.

Sec. 6. It shall not be necessary to name or set down any prosecutor to any presentment or indictment found under this act. In every such indictment or presentment, it shall be sufficient to state in substance—That the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ acted as an officer of a bank, not incorporated by law; or that the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ paid (or offered in payment, as the case may be) the bond, bill, note or contract, of a bank not incorporated by law, for the sum of \_\_\_\_\_ dollars, without setting forth the special matter.

What necessary in the prosecution of suits.

Sec. 7. And in every suit brought under this act, it shall be sufficient to set forth in substance, the matter aforesaid, without setting forth the special matter.

Duty of circuit court.

Sec. 8. It shall be the duty of every circuit court, who shall have any reason to suspect that any of the provisions of this act have been violated within their circuit, to give this act in charge to the grand jury.

The bonds of such institution declared void.

Sec. 9. *And be it further enacted,* That all bonds, bills, notes or contracts hereafter executed, which shall purport to be negotiable or payable at such bank, shall be and the same are hereby declared null and void. And all bonds, bills, notes or written contracts, given to such bank, or discounted by such bank, shall be and are hereby declared null and void.

Every such bank and its agents and servants incapable of suing.

Sec. 10. And every such bank, and every trustee or person on its behalf, or for its benefit, is hereby declared incapable of maintaining any suit in any court in this commonwealth, for any matter whatever. And every suit in which it shall, at any stage thereof, be made appear that such suit is in whole or in part for the benefit of such bank, shall be dismissed with costs.

Every stockholder, shareholder.

Sec. 11. *And be it further enacted,* That every stockholder, shareholder or partner hereafter interested in

any such bank, shall be jointly and severally answerable <sup>1811.</sup> in their individual capacity, for the whole amount of the bonds, bills, notes and contracts of such bank hereafter executed; any agreement, shift or device in such bond, bill, note or contract, or otherwise, to the contrary notwithstanding. <sup>holder or partner, severally answerable.</sup>


Sec. 12. And the holder of any bond, bill, note or contract of such bank, may institute suit and recover judgment thereon, against any part or the whole of the persons who were interested in such bank at the date of such bond, bill, note or contract, or who become interested in such bank at any time between that and the commencement of such suit. <sup>Persons holding their contracts may recover a judgment against any of them.</sup>

Sec. 13. In such suit it shall be sufficient for the plaintiff to set forth in substance—That he is the holder of such bond, bill, note or contract; that the defendants were interested in said bank at the date of such bond, bill, note or contract, or subsequent thereto; and that it remains unpaid. It shall be unnecessary to shew in the declaration or pleadings, and unnecessary to prove on the trial, that a demand was made of the contents of such bond, bill, note or contract, at the time or place when and where it purports to be payable; but the persons aforesaid shall be liable without such demand. <sup>What necessary in such suit.</sup>

Sec. 14. If during the progress or on the trial of such suit, it shall appear that any one or more of the defendants are not liable to such action under this act, it shall not prevent the suit from proceeding as to any other defendant; but judgment shall be given for the full amount of such bond, bill, note or contract, against any one or more of the defendants who may appear to be liable. <sup>What proceedings may be had in such suit.</sup>

Sec. 15. Nothing in this act contained shall extend to any company incorporated by a law of this commonwealth, who may be authorised by their charter to loan money, or otherwise to act as a bank, so long as the charter of such company remains in full force. <sup>Restrictions of this act.</sup>

Sec. 16. This act shall commence and be in force from and after the 10th day of February next: *Provided however*, that time shall be allowed to all such private companies and associations now existing, till the first day of December 1812, for the sole and only purpose of settling and closing their business and accounts: *And provided also*, that the penalties and forfeitures <sup>To commence. Provisoes.</sup>

1811.  herein enacted, in the fourth section of this law, against persons offering in payment the bond, bill, note or contract of such company or association, shall be suspended until the said first day of December 1812: *And provided also*, that such company or association may renew any note or notes which may have been discounted before the passage of this law, until the said first day of December 1812: *Provided nevertheless*, that this act shall not affect the bank of Louisville, or any of its officers or persons dealing with them as such, previous to the 10th of December next.

### CHAPTER CCCLXXXVII.

*An ACT to divide this State into Congressional Districts.*

Approved February 8, 1812.

Preamble. WHEREAS by a law passed at the present session of congress, the state of Kentucky is entitled to ten members to represent it in the congress of the United States :

State divided into 10 districts. Sec. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky*, That this state shall be and it is hereby divided into ten congressional districts.

First district. Sec. 2. The first district to consist of the counties of Clarke, Estill, Montgomery, Bath, Fleming, Greenup and Floyd.

Second. Sec. 3. The second district to consist of the counties of Fayette, Jessamine and Woodford.

Third. Sec. 4. The third district to consist of the counties of Scott, Harrison, Pendleton, Campbell, Boone, Gallatin and Franklin.

Fourth. Sec. 5. The fourth district to consist of the counties of Bourbon, Nicholas, Bracken, Mason and Lewis.

Fifth. Sec. 6. The fifth district to consist of the counties of Livingston, Caldwell, Christian, Breckenridge, Ohio, Grayson, Muhlenburg, Henderson, Hopkins and Union.

Sixth. Sec. 7. The sixth district to consist of the counties of Barren, Warren, Logan, Butler and Cumberland.

Seventh. Sec. 8. The seventh district to consist of the counties of Mercer, Garrard, Madison and Clay.

Eighth. Sec. 9. The eighth district to consist of the counties of Bullitt, Jefferson, Henry and Shelby.

Ninth. Sec. 10. The ninth district to consist of the counties

## XX. YEAR OF THE COMMONWEALTH.

403

of Lincoln, Rockcastle, Knox, Pulaski, Wayne, Adair 1811:  
and Casey.

Sec. 11. The tenth district to consist of the counties Tenth.  
of Hardin, Nelson, Washington and Green.

Sec. 12. *Be it further enacted by the authority afore-* Elections, when  
*said,* That on the first Monday in August next, the qua- & where held.  
lified voters in the several districts aforesaid, at the  
places they vote for representatives for the state legisla-  
ture, shall also vote for some fit person, who shall re-  
side in this state, being twenty-five years of age, and  
having been seven years a citizen of the United States,  
to represent them in congress two years from the third  
day of March 1813. The next succeeding election  
shall be for representatives to congress at the general  
election in this state in the year 1814; and every se-  
cond year thereafter.

Sec. 13. *Be it further enacted by the authority afore-* Duty of the sher-  
*said,* That the sheriffs of the several counties in each riffs.  
district, shall, on the fifteenth day after the commence-  
ment of their elections, assemble at the places hereafter  
designated in this act, in each of their respective dis-  
tricts, and then by faithful comparison and addition, as-  
certain the person elected in their district.

Sec. 14. The sheriffs for the first district, at the court-  
house in the county of Bath—the sheriffs for the second Bath.  
district, at the court-house in the county of Fayette— Fayette.  
the sheriffs for the third district, at the court-house in Scott.  
the county of Scott—the sheriffs for the fourth district, Nicholas.  
at the court-house in the county of Nicholas—the she-  
riffs for the fifth district, at the court-house in the coun- Hopkins.  
ty of Hopkins—the sheriffs for the sixth district, at the Warren.  
court-house in the county of Warren—the sheriffs for  
the seventh district, at the court-house in the county of Garrard.  
Garrard—the sheriffs for the eighth district, at the court-  
house in the county of Shelby—the sheriffs for the ninth Shelby.  
district, at the court-house in the county of Pulaski— Pulaski.  
the sheriffs for the tenth district, at the court-house in Hardin.  
the county of Hardin.

Sec. 15. *Be it further enacted by the authority afore-* The sheriffs to  
*said,* If, on comparing the polls in any one district, it meet and com-  
shall so happen that two candidates stand equal in num- pare polls.  
ber, the sheriffs so assembled shall vote for one of them;  
and if after such vote an equal number shall remain, in  
that case the sheriffs shall determine by lot, which of the  
candidates shall be returned elected.

1811. *To give certificate of election.* Sec. 16. After having ascertained as before directed, the person elected in each district, the sheriffs thereof shall make out a certificate of the election of the person in their district; which shall be signed by all the sheriffs of the district, and which shall be lodged with the sheriff of the county wherein the polls are compared, and by him, together with a copy of the polls, transmitted to the secretary of state.

*And transmit to secretary of state.*

*Allowance to sheriffs.* Sec. 17. *And be it further enacted by the authority aforesaid,* That the sheriffs so assembled to compare the polls, and for transmitting the necessary papers to the secretary, shall be entitled to one dollar and fifty cents for every twenty-five miles in going to and returning, and two dollars per day for every day while there necessarily, to be paid as heretofore.

#### CHAPTER CCCLXXXVIII.

*An ACT to amend the law authorising the appropriation of the Lands acquired by the Treaty of Tellico.*

Approved February 8, 1812.

The acts here referred to are Chaps. 82 and 271, of this Volume.

*Certain lands, how appropriated and paid for* Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky,* That all persons who may hereafter obtain a certificate for any waste and unappropriated lands, lying in that section of this commonwealth acquired by the treaty at Tellico, shall, agreeably to the provisions of the act approved 31st January 1810, for appropriating the lands acquired by the treaty of Tellico, and the act amendatory thereto, approved January 31st 1811, for the same, pay into the treasury of this state, in three equal annual instalments, at the rate of twenty dollars per hundred acres; the first instalment to be paid on the first day of January next, and on that day in every succeeding year, until the whole shall be paid in the term aforesaid.

*Land to be sold if the instalments are not paid.* Sec. 2. *Be it further enacted,* That if any instalment hereby allowed on any tract of land acquired as aforesaid, shall not be paid on or before the first day of January, and on that day annually thereafter, the lands upon which such instalment shall not be paid, shall be exposed to sale under the same rules and regulations now in force relative to the sale of head-right lands in this commonwealth.



Sec. 3. *And be it further enacted*, That no person or persons who have settled or obtained a certificate or certificates, under the act appropriating the land acquired by the treaty of Tellico, passed January 31st 1810, or under an act passed January 31st 1811, to amend the law authorising the appropriating said land, shall be entitled to take up and appropriate land under the provisions of this act. And before any person or persons shall be allowed to take up land under this act, he, she or they shall, before the court, at the time of the application for a certificate, as provided in the before mentioned two acts, make oath, "that he, she or they have not taken up or received a certificate in his, her or their own name or names, nor by any other in his, her or their behalf, any land under or in virtue of the before recited two acts."

1811.

No person who has heretofore acquired lands under the provisions of the act referred to, permitted to take up land under this act.

Certificate for lands, how to be obtained.

Sec. 4. *And be it further enacted*, That the clerks of the courts of the circuits within the bounds of the lands embraced by this act, shall, within six months from its passage, transmit to the auditor of public accounts, an account of all certificates issued for lands under the provisions of former laws, previous to the first day of January last, under the penalty of one hundred dollars, to be sued for and recovered of each clerk by the auditor, upon motion, as in other cases; and to be applied to the aid of the public revenue. And hereafter it shall be the duty of the clerks in whose courts certificates may be granted, to transmit to the auditor a transcript of the certificates, within six months after such certificates may be granted, subject to the like penalty.

Duty of certain circuit court clerks.

Penalty for failure in their duty.

How recovered and applied.

Further duty of certain clerks.

#### CHAPTER CCCLXXXIX.

*An ACT for the relief of the Sheriffs of Gallatin and Wayne.*

Approved February 8, 1812.

This was respecting delinquent lifts.

#### CHAPTER CCCXC.

*An ACT for the benefit of the heirs of John Harrow.*

Approved February 8, 1812.

They were infants, and inherited mills from their ancestor, which they were not able to keep in repair. This act appointed commissioners to sell them.

1811.

## CHAPTER CCCXCI.

*An ACT concerning the General Court.*

Approved February 8, 1812.

Repealing  
clause.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That so much of the law which directs the general court to be held in the month of May, shall be and the same is hereby repealed.

To fit in July.

Sec. 2. *Be it further enacted*, That the general court shall hereafter hold a session in the month of July in every year, to commence on the first Monday thereof.

Respecting pro-  
cess.

Sec. 3. *And be it further enacted*, That the general court shall have power to hear and determine all manner of business at the said July sessions, in as ample form and effect as the said court was authorised by law to do at the May terms; and all process made returnable to the May term next, shall be considered as returnable to the July term next; and be as good and valid in law, as if this act had not been passed.

## CHAPTER CCCXCII.

*An ACT to add a part of Clay and Rockcastle to the County of Madison.*

Approved February 8, 1812.

Boundary.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That from and after the first day of March next, all that part of Clay and Rockcastle counties included in the following boundary, to wit: Beginning on the line of Madison and Rockcastle counties, near to Thomas Hooton's, where the course of said line varies to strike Horselick creek, one half mile below the Double Lick; thence east to Indian Lick creek; thence up the same, and the main fork thereof, to the old line between the counties of Madison and Clay, shall be added to and be a part of Madison county.

Jurisdiction of  
courts of Clay  
and Rockcastle.

Sec. 2. The circuit and county courts and justices of the peace in the counties of Clay and Rockcastle, shall have jurisdiction over all matters originating and brought before them, prior to the commencement of this act.

Duty of sheriffs  
and collectors.

And it shall be lawful for the sheriffs, constables and collectors, in the said counties of Clay and Rockcastle, to collect all fees and money, and execute all process.

writs and executions, as the law directs, which were put into their hands for collection or execution, previous to the commencement of this act; and shall account for the same as if this law had not passed.

1811.

## CHAPTER CCCXCIII.

*An ACT to extend the law authorising a Turnpike on the Road leading from the Counties of Madison and Lincoln to Goose Creek Salt-Works, in Clay County.*

Approved February 8, 1812.

*BE it enacted by the general assembly of the commonwealth of Kentucky,* That the act passed the 31st day of January 1810, authorising a turnpike on the road leading from the counties of Madison and Lincoln to the lower Goose creek salt works, in Clay county, shall be and the same is hereby extended two years from the 31st day of January 1812, and no longer: *Provided,* that all salt packers going to and from the said salt-works, shall be exempt from paying toll, any law to the contrary notwithstanding.

## CHAPTER CCCXCIV.

*An ACT concerning Alimony and separate maintenance of Wives and Children abandoned by their Husbands and Fathers.*

Approved February 8, 1812.

*Sec. 1. BE it enacted by the general assembly of the commonwealth of Kentucky,* That where any man, united in lawful marriage, hath or hereafter shall renounce the marriage covenant, by refusing to live with his wife in the conjugal relation, by uniting himself to any sect, whose creed, rules or doctrines require a renunciation of the marriage covenant, or forbid a man and wife to dwell and cohabit together, according to the true spirit and object of marriage, the person so offending shall subject himself to recovery of alimony or separate maintenance by the wife aggrieved thereby.

Alimony may be recovered.

*Sec. 2. Be it further enacted,* That the wife so aggrieved, may file her petition or bill in chancery, in any of the circuit courts of this commonwealth, hereby vesting them with jurisdiction to cause such proceed-

Wife may file a bill or petition.

|                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1811.</p> <p>Power and duty of court.</p>                           | <p>ings to be had on such bill or petition, as in other cases in chancery ; and give such orders and decrees thereon, as equity and justice of the case require. And should the party complaining, come within the equity of this act, it shall be the duty of the court before whom such complaint is made, to ascertain the amount of the property, real, personal and mixed, of the husband so offending, and decree such part thereof to the wife, as they may deem just and equitable.</p>                                                                                                                                                                     |
| <p>Decree.</p> <p>Provision for Children of offenders.</p>             | <p>Sec. 3. If the husband so violating and renouncing the marriage covenant, shall have a child or children, (under age and unprovided for) it shall be the duty of the court before whom complaint is made, to decree such part of the remainder of said husband's estate to the child or children aforesaid, as to them shall seem equitable. And such court may also appoint guardian or guardians for such child or children, who may be, by the court, or such guardian, bound apprentices, according to the laws on that subject, or remain with and subject to the control of the mother, without molestation, control or hindrance of her said husband.</p> |
| <p>Guardians may be appointed.</p> <p>Power and duty of guardians.</p> | <p>Sec. 4. The guardians so appointed, shall come under the same conditions, perform the same duties, and be held subject to the same regulations and penalties, as guardians appointed by county courts.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>Jury to try the facts.</p> <p>How docketed</p>                      | <p>Sec. 5. The court before whom such complaint shall be made, shall cause a jury to be empanelled to try such facts as shall be urged or relied on by the party complaining and set forth in a bill or petition ; which bill or petition shall be docketed among commonwealth's prosecutions of the court where the same is filed, and shall be tried in its turn, when called or continued, or laid over to some convenient day, as the discretion of the court may direct.</p>                                                                                                                                                                                   |
| <p>Property of offender subject to a satisfaction of decree.</p>       | <p>Sec. 6. Where any man shall have violated or renounced the marriage contract, according to the true spirit and meaning of this act, no conveyance, gift, grant or devise, to any sect, member or members thereof, to whom he has or is about to unite himself shall prevent the property, real, personal or mixed, so given, granted, conveyed or devised, from being subject to any decree or decrees pronounced by the proper court in favor of any wife, child or children coming within the provisions of this act: <i>Provided however</i>, that no property shall</p>                                                                                      |

be decreed to any wife, child or children, under any provision of this act, where such wife, child or children shall have been amply and fully provided for by such husband, according to the full extent of his estate; nor shall the benefits of this act be granted to any wife who has lived in open adultery. 1811.  
Where wives or children are already provided for.

Sec. 7. After a final decree in favor of the wife under this act, the power of the husband over such wife shall cease and determine; and she shall have a right to use her alimony, or the property so decreed her, and to acquire, use and dispose of any property whatever, without being subject to the control, molestation or hindrance of her said husband, in the same manner as if she was a *feme sole*. After a decree, power of husband over wife ceases.  
She may acquire and hold property.

Sec. 8. Where any wife, coming under the provisions of this act, shall pray a divorce in her bill or petition, it shall be lawful for the court before whom the same is made, to pronounce a decree, declaring such wife divorced to all intents and purposes, from her said husband; but such decree shall not operate so as to release such husband, who shall nevertheless remain subject to all the pains and penalties which the law prescribes against a marriage whilst a former wife is living; nor shall the wife so divorced, again marry within one year after the date of such final decree. Court may also decree a divorce

Sec. 9. *Be it further enacted*, That where any wife hereafter shall renounce the marriage covenant, and abandon her husband, according to the tenor, effect and meaning of the first section of this act, it shall and may be lawful for the husband so abandoned, to sue for and obtain a divorce, subject to the regulations and provisions of the several laws regulating divorces; but such divorce shall not operate so as to release such wife, who shall nevertheless remain subject to all the pains and penalties which the law prescribes against a marriage whilst a former husband is living; nor shall the husband so divorced, again marry within one year after the date of the decree pronouncing such divorce. Wives violating marriage contract, husband may obtain a divorce.

Sec. 10. *And be it further enacted*, That if any religious association of persons, or any person or persons belonging to such association, or acting under their authority, shall illegally detain an infant or *feme covert*, a writ of *habeas corpus* may be had and obtained of right, by any person applying therefor. And the circuit judge Privilege of *habeas corpus*, extended.  
Duty of court thereon,

1817.

Penalty on failure to obey.

or assistant judges of the circuit court issuing said writ, shall proceed in the premises according to law; and if the persons composing such association, or any person or persons belonging thereto, or acting under their authority, to whom such writ may be directed, shall refuse or fail, without a sufficient reason assigned, to comply with the directions of the writ, such refusal or failure shall subject the offender or offenders, and each of them, to a penalty not exceeding five hundred dollars, to be applied to the reduction of the county levy, upon conviction on indictment in the circuit court having jurisdiction of the offence. And it shall be the duty of the attorney for the commonwealth of the circuit court of the county where such detention may happen, upon the request of any person whatever, to attend to the prosecution of said writ.

## CHAPTER CCCXCV.

*An ACT for the benefit of the heirs of Joseph Chasten, deceased.*

Approved February 8, 1812.

They were infants, and inherited the moiety of a mill. This act directed commissioners to be appointed to ascertain whether it were better for them to keep it or have it sold, and to sell it, if necessary.

## CHAPTER CCCXCVI.

*An ACT directing the mode of choosing Electors to vote for a President and Vice-President of the United States.*

Approved February 8, 1812.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That this state shall be divided into three districts, for the purpose of electing twelve electors to choose a president and vice-president of the United States, in the following manner, to wit: The first district shall be composed of the counties of Adair, Breckenridge, Butler, Christian, Caldwell, Cumberland, Grayson, Green, Hardin, Hopkins, Henderson, Livingston, Logan, Barren, Muhlenburg, Ohio, Pulaski, Union, Warren and Wayne. The second district shall be composed of the counties of Washington, Bullitt, Jefferson, Shelby, Henry, Gallatin, Franklin, Nelson, Mercer, Casey, Lincoln, Garrard, Rockcastle,

State divided into 3 districts.

First district.

Second.

Knox, Clay, Madison and Estill. The third district 1811.  
 shall be composed of the counties of Floyd, Greenup, Lewis, Fleming, Bath, Montgomery, Clark, Bourbon, Third.  
 Nicholas, Mason, Bracken, Harrison, Pendleton, Campbell, Boone, Scott, Fayette, Woodford and Jessamine.

Sec. 2. *And be it further enacted,* That the qualified voters in this commonwealth shall meet at their respective court-houses, or place appointed by law for holding elections in their respective precincts within each county, on the second Monday in November next, and vote for four fit persons, who shall be residents of the district, as electors to vote for president and vice-president of the United States. The same rules and regulations shall be observed by the several sheriffs, clerks, judges and voters, as is provided by law in electing members to the general assembly.

Sec. 3. *And be it further enacted,* That the several sheriffs holding elections in any election precinct, shall meet at their respective court-houses on the fifth day, inclusive, after the commencement of the election, and there make faithful addition of the number of votes taken in their counties; and the sheriff in each county shall, on the tenth day, inclusive, after the commencement of the election, meet as follows, to wit: Those in the first district, at the court-house of Barren; those in the second, at the court-house of Mercer; and those in the third, at the court-house of Bourbon; and then and there compare the polls of their respective districts, in the same manner and under the same rules and regulations, and in case of failure, subject to the same penalties as are prescribed by law in electing members to congress; and shall certify, under their hands and seals, the persons elected in their several districts. And it shall be the duty of the sheriff of the county where the polls are compared, to transmit such certificates of election to the secretary of state, within six days after such meeting of the sheriffs, under the penalty of two thousand dollars, to be collected by motion in any court having cognizance of the same, ten days previous notice being given; and the secretary, on the receipt of such certificate, shall cause the names of those persons so elected, to be published in the gazette of the public printer.

The qualified voters to meet at the place of holding their elections.

When.

Sheriffs, clerks and judges, how governed.

Duty of sheriffs holding elections in precincts.

Sheriffs to meet and when.

Barren.

Mercer.

Bourbon.

Sheriffs to compare votes and give certificate.

Sheriffs, where polls are compared to transmit certificate to secretary of state.

Penalty on sheriff, and recovered.

Secretary to have the names of the electors published.

1811. *Sec. 4. And be it further enacted, That the electors so*  
 { elected, shall meet at the state-house in the town of  
 Frankfort, on the first Wednesday in December there-  
 after, and there vote for a president and vice-president  
 of the United States, and make return thereof agreeable  
 to the law of the United States in that case made and  
 provided. And the sheriffs, for attending and compar-  
 ing the polls under this act, shall be entitled to the  
 same allowance and paid in the same manner as for at-  
 tending and comparing polls for members of congress.  
 And each elector shall be allowed two dollars for every  
 twenty-five miles he shall necessarily travel, and two  
 dollars per day while attending in Frankfort as an elec-  
 tor; for which the auditor is hereby directed to issue  
 his warrant on the treasury.

*Electors, when and where to meet.*  
*To make return*  
*Sheriffs' allow-  
ance,*  
*How paid.*  
*Allowance to  
electors,*  
*How paid.*

*Sec. 5. Be it further enacted, That the sheriff of any*  
 county in which any person chosen as an elector shall  
 reside, shall give such elector or electors notice in writ-  
 ing, of his being elected, within four days from the day  
 of comparing the polls, and on failure, shall be subject to  
 be fined one thousand dollars, by any circuit court of  
 this commonwealth, ten days previous notice being gi-  
 ven him that a motion will be made.

*Sheriffs to give  
notice of elec-  
tion to the per-  
son elected.*  
*Penalty on fail-  
ure, and how  
recovered.*

#### CHAPTER CCCXCVII.

*An ACT for the benefit of the heirs of Achilles Eastin,  
deceased, and the heirs of Samuel Ingram, deceased.*

Approved February 8, 1812.

This act appointed commissioners to sell 90 acres of land, descended to Eastin's heirs, and authorized the adult heirs of Ingram, together with the mother, her husband and the guardian of the infants, to convey, in behalf of the heirs collectively, a tract of land which Ingram in his life time had contracted to convey.

#### CHAPTER CCCXCVIII.

*An ACT for the benefit of the heirs of John Robinson,  
deceased.*

Approved February 8, 1812.

This act authorized the emanation of a patent to them for 400 acres of land on which their father had settled and died.

#### CHAPTER CCCXCIX.

*An ACT for the relief of the Surveyor of Nelson County.*

Approved February 8, 1812.

He had failed to give bond with security, as required by law. This act permitted him still to do it.



## CHAPTER CCCC.

1811.

*An ACT fixing the Ratio and apportioning the Representation for the ensuing four years.*

Approved February 8, 1812.

Sec. 1. *BE it enacted by the general assembly of the* Ratio fixed at  
*commonwealth of Kentucky,* That the ratio for the next 700.  
 four years shall be and the same is hereby affixed at  
 seven hundred qualified voters for each representative ;  
 and that the representation for that period shall be and  
 the same is hereby apportioned throughout the state, for  
 the house of representatives, in the following manner, to  
 wit : From the county of Adair, one ; from the county Representatives  
 of Barren, two ; from the county of Boone, one ; from  
 the county of Bracken, one ; from the county of Bour-  
 bon, three ; from the county of Breckenridge, one ;  
 from the county of Bullitt, one ; from the county of  
 Bath, one ; from the counties of Butler and Grayson,  
 one ; from the county of Caldwell, one ; from the coun-  
 ty of Clark, two ; from the county of Campbell, one ;  
 from the county of Christian, two ; from the county of  
 Cumberland, one ; from the county of Clay, one ; from  
 the county of Casey, one ; from the county of Fayette,  
 three ; from the county of Floyd, one ; from the coun-  
 ty of Fleming, two ; from the county of Franklin, one ;  
 from the counties of Greenup and Lewis, one ; from  
 the county of Garrard, two ; from the county of Galla-  
 tin, one ; from the county of Green, two ; from the  
 counties of Hopkins and Union, one ; from the county  
 Hardin, two ; from the county of Harrison, two ; from  
 the county of Henry, one ; from the county of Hender-  
 son, one ; from the county of Jefferson, two ; from the  
 county of Jessamine, one ; from the county of Knox,  
 one ; from the counties of Lincoln and Rockcastle, two ;  
 from the county of Logan, two ; from the county of  
 Livingston, one ; from the county of Mercer, two ;  
 from the county of Madison, three ; from the county of  
 Muhlenburg, one ; from the counties of Montgomery  
 and Estill, two ; from the county of Mason, two ; from  
 the county of Nelson, three ; from the county of Ni-  
 cholas, one ; from the county of Ohio, one ; from the  
 county of Pulaski, one ; from the county of Pendleton,  
 one ; from the county of Scott, two ; from the county  
 of Shelby, three ; from the county of Woodford, two ;

1811. from the county of Warren, two; from the county of Wayne, one; from the county of Washington, three.

Senatorial districts.

Sec. 2. *And be it further enacted*, That for the purpose of apportioning the representation in the senate, the state shall be and is hereby laid off into thirty-one senatorial districts, as follows, to wit: The counties of Bath, Floyd and Greenup, shall compose the first district; the counties of Mason and Lewis, the second; the counties of Fleming and Nicholas, the third; the county of Bourbon, the fourth; the county of Fayette, the fifth; the county of Montgomery, the sixth; the counties of Clark and Estill, the seventh; the counties of Woodford and Jessamine, the eighth; the county of Scott, the ninth; the counties of Franklin and Gallatin, the tenth; the counties of Harrison and Bracken, the eleventh; the counties of Campbell, Pendleton and Boone, the twelfth; the county of Shelby, the thirteenth; the county of Henry, the fourteenth; the counties of Jefferson and Bullitt, the fifteenth; the county of Nelson, the sixteenth; the county of Washington, the seventeenth; the counties of Breckenridge, Ohio, Hardin and Grayson, the eighteenth; the counties of Henderson, Muhlenburg, Hopkins and Union, the nineteenth; the counties of Logan and Butler, the twentieth; the counties of Livingston and Caldwell, the twenty-first; the county of Christian, the twenty-second; the county of Warren, the twenty-third; the county of Barren, the twenty-fourth; the counties of Cumberland and Wayne, the twenty-fifth; the counties of Green and Adair, the twenty-sixth; the counties of Lincoln and Casey, the twenty-seventh; the county of Mercer, the twenty-eighth; the counties of Garrard and Rockcastle, the twenty-ninth; the county of Madison and Clay, the thirtieth; and the counties of Knox and Pulaski, the thirty-first.

Where sheriffs to meet, and when.

Sec. 3. *And be it further enacted*, That in order to ascertain the polls, where more than two counties compose a senatorial district, the sheriffs of such counties shall meet at the court-house of the county first named in such district, either in choosing a senator or a representative. And in the choice of a representative, where there are two counties, the sheriffs of such counties shall meet at the court-house of the county first named, to compare such representation, on the first Monday af-

ter said election shall have commenced, inclusive of the first day of said election; and having ascertained by a faithful comparison and addition, the amount of their respective polls, shall make return of the persons elected, in the manner prescribed by law.

1811.

Sec. 4. *Be it further enacted*, That if any new county shall be established before the next enumeration and apportionment of representation, it shall be considered as a part or parts of the county or counties from which it was taken, for the purpose of representation.

Sec. 5. *Be it further enacted*, That the several sheriffs attending elections in the county of Caldwell, shall meet at the court-house in said county, on the Thursday next succeeding the close of each election, for the purpose of comparing the votes given for the persons hereafter to be elected; and that the sheriff who may preside at the election precinct in Livingston county, shall meet the sheriff who presided at the court-house, at said court-house, on the Thursday next succeeding each election, for the purpose of comparing the votes given as aforesaid; and that the sheriff of Caldwell and Livingston, shall meet at Centreville, on the Saturday next succeeding each senatorial election, for the purpose of comparing the votes given for senator, any thing in the acts forming election precincts in said counties to the contrary notwithstanding.

Duty of sheriffs  
of Caldwell and  
Livingston re-  
specting elec-  
tions.

Sec. 6. *Be it further enacted*, That the sheriffs attending the precincts in the county of Christian, shall meet at the court-house on the Saturday after each election, and shall then and there compare the polls of the candidates, and give certificates as the law directs to the persons elected, any law to the contrary notwithstanding.

#### CHAPTER CCCCI.

##### *An ACT concerning the Kentucky Herald.*

Approved February 8, 1812.

This act authorises the insertion of advertisements in a paper styled, which it says is to be published in Bardstown. No such paper has yet been published there.

#### CHAPTER CCCCII.

##### *An ACT for the benefit of Andrew Burke and others.*

Approved February 8, 1812.

They were proprietors of head-right claims: their respective cases, and the relief granted, is interesting only to them.

1811.

## CHAPTER CCCCIII.

*An ACT to amend the several acts respecting Election Precincts in the County of Ohio.*

Approved February 8, 1812.

First precinct.

Sec. 1. *BE it enacted by the general assembly,* That all that part of the county of Ohio, contained in the following bounds, to wit: Beginning at the mouth of Panther creek, thence up said creek to the Crane pond, thence a direct course to Baxter Davis's, on Barnet's creek, and to include him; thence down said creek to Rough creek, thence down Rough creek to Green river, and down Green river to the beginning, shall be deemed the first election precinct; and the election for said precinct shall be held at the house of Isaiah Hunt, on Longfall's creek.

Second precinct

Sec. 2. *Be it further enacted by the general assembly,* That all that part of the said county contained in the following bounds, to wit: Beginning at the mouth of Panther creek, thence down Green river to the Henderson county line, thence with said line to the Ohio, thence up the Ohio to the Breckenridge county line, thence with said line to Panther creek, and down the same to the beginning, shall be designated by the second election precinct; and the election for said precinct shall be held at the house of John Laman, at the Yellow Banks.

Third precinct.

Sec. 3. *Be it also further enacted by the general assembly,* That all that part of the said county contained in the following bounds, to wit: Beginning at a point on Rough creek, so that by running a due north course to Panther creek, will leave Pardon Tabor one mile to the east; thence up Panther creek to the Breckenridge county line; thence with said line to Rough creek, and down the same to the beginning, shall be deemed the third election precinct; and the election for the aforesaid precinct shall be held at the house of Benjamin Kelly, on Adam's fork. The county court of Ohio

County court to appoint judges, &c. to conduct elections.

county shall annually appoint two judges of the election and a clerk, resident in each of the foregoing precincts, whose duty it shall be, together with the sheriff or deputy sheriff of the county of Ohio, to attend at the several places appointed for holding elections, on the days required by law; and after taking the necessary oaths,

to conduct the election, under the same rules and regulations as prescribed in other cases of elections; and on failure of the judges, clerk, or either of them, to attend, their places shall be supplied by the sheriffs, calling on some discreet by-standers, citizens of the said precinct; and all the voters in said precinct shall vote therein, and not elsewhere.

1811.

Sec. 4. *Be it further enacted*, That the sheriff attending the respective elections at the court-house of said county and the said precincts, shall meet at the court-house on the Saturday next succeeding the commencement of each general election; and at the same place on the fourth day, inclusive, succeeding the commencement of any election held by virtue of a writ of election; and having so met, in either case, to compare and add the respective polls, and join in a certificate or certificates to the person or persons elected.

When sheriffs  
to meet to com-  
pare polls.

Sec. 5. *Be it further enacted by the general assembly*, That all acts and parts of acts heretofore enacted, laying off election precincts in the county of Ohio, shall be and are hereby repealed.

Repealing  
clause.

#### CHAPTER CCCCIV.

*An ACT authorising the Trustees of the Town of Nicholasville to sell real property in said Town, under certain restrictions.*

Approved February 8, 1812.

Sec. 4. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the trustees of the town of Nicholasville, in the county of Jessamine, shall have power to levy a tax on the real property in said town, in proportion to the value of the lots, not exceeding one hundred cents for every hundred dollars; and the trustees, or a majority of them, shall have power to cause an assessment to be made of the lots in said town, in order to enable them to fix the sum to be paid by the proprietors or occupants of the lots: *Provided however*, that a majority of the trustees shall concur in laying the tax.

Power of trustees.

Sec. 2. And the trustees, or a majority of them, may appoint some fit person to collect the tax. And should the owner or occupant refuse to pay the tax, for the space of three months after the amount of the tax is

Trustees to appoint collector of tax.

1811. fixed as herein provided, in that case the collector shall, after giving thirty days notice by advertisement at three of the most public places in said town, expose for sale the lot or lots, or so much thereof as will be sufficient to pay the tax and cost of sale; but the owner or owners of the lot or lots, his, her or their heirs, executors or administrators, shall have twelve months from the time of sale of the lot or lots, or parts of lots, to redeem the lot or lots, or part of lot or lots, by paying to the purchaser the amount of the lot or lots, or part of lots sold, with 100 per cent. thereon. And the collector shall be entitled to seven per cent. on the amount of the tax collected under this act.

Lo's may be  
fold, and how  
long advertised.

Owners may re-  
deem.

Further power  
of trustees. Sec. 3. And the trustees of the town shall have full power to convey to the purchaser, by deed or deeds of conveyance, the lots or parts of lots sold under the provisions of this act, and not redeemed within the time allowed for redemption, which shall vest in the purchaser, his, her or their heirs, or assignee or assigns, all the right, title and interest of the owner or owners, in and to the lot or lots, or parts of lots; saving however to infants, *femes covert*, and persons of unsound minds, a right to redeem within three years after their several disabilities shall be removed, or come of age: *Provided however*, that the collector shall not be allowed to sell any lot or part of a lot where sufficiency of personal estate can be found on such lot or lots, or parts of lots, to satisfy the tax due; which the collector is hereby authorised to seize and sell.

#### CHAPTER CCCC.V.

*An ACT authorising the sale and conveyance of part of the Public Ground of the County of Jefferson, in the Town of Louisville.*

Approved February 8, 1812.

#### CHAPTER CCCC.VI.

*An ACT to amend an act entitled "an act to amend the law respecting Cut Money."*

Approved February 8, 1812.

The act, part of which is here repealed, is the 52d Chap. of this Volume.

Sec. 1. *BE it enacted by the general assembly of the commonwealth of Kentucky*, That the fourth section of

the act aforesaid, shall be and the same is hereby repealed.

1811.

Sec. 2. *Be it further enacted*, That cut silver shall be received, by weight, into the public treasury, in discharge of any revenue or debt due or to become due unto the commonwealth of Kentucky, under the regulations prescribed by the act aforesaid, until the expiration of three years from the passage of this act.

#### CHAPTER CCCCVII.

*An ACT directing the duties of the Sergeant of the Court of Appeals.*

Approved February 2, 1812.

Sec. 1. *BE it enacted by the general assembly of the* *commonwealth of Kentucky*, That it shall be lawful for all process issued from the general court, to be directed to the sergeant of the court of appeals; and it shall be the duty of the said sergeant, by himself or his deputy, to duly execute and return all such process to him directed, in like manner as sheriffs are by law required to execute and return similar process to them directed; and for any misconduct in office, or neglect of duty by such sergeant or his deputy, in relation to such process, the like penalties shall be incurred and the like remedy had as are imposed and prescribed by law in relation to sheriffs. It shall also be the duty of the said sergeant to serve all notices on sheriffs, clerks, coroners, collectors of public monies, and their securities, and all others which may by any officer of government, be put into his hands for service, in relation to any suit depending in the general court, in which the commonwealth is a party. And for his services therefor, he shall be entitled to receive the sum of sixty-two and one half cents for each defendant on whom he shall serve such notice, and the sum of three cents for every mile he shall necessarily travel in going to and returning from serving such notice.

Process to be directed to the sergeant of the court of appeals

His duty.

Penalty for neglect of duty.

His fee for serving process.

Sec. 2. The fees of the sergeant, for the other services required by him, shall be the same as given by the law authorising the appointment of a sergeant of the court of appeals. His fees for the service of process, &c. shall be taxed in the bill of costs, and be recovered in the same manner as sheriffs' fees for similar services.

Fees for other services.

1811. **Sec. 3.** For all fees against the commonwealth for services rendered by the sergeant, he shall exhibit an account to the court, in relation to whose business the service was rendered; which court shall examine the same, and upon being satisfied of the performance of the service, and of the correctness of the charges, shall certify the same to the auditor of public accounts, who shall thereupon issue his warrant therefor, and the same shall be paid out of the public treasury.

To exhibit his account to the court.

To be examined by the court and certified to auditor.

To do the duty of the sheriff of Franklin.

To execute a bond.

**Sec. 4.** *And be it further enacted,* That in future the sergeant of the court of appeals be appointed and empowered to do the duty of the sheriff of Franklin county, in the general court, during their session; and that he receive the same compensation. And the said sergeant shall enter into bond with security, to be approved by the general court, in the sum they may think necessary, for the full and faithful discharge of the duties enjoined by this act.

#### CHAPTER CCCCVIII.

*An ACT allowing compensation to the Commonwealth's Attornies.*

Approved February 8, 1812.

WHEREAS it has been represented to this general assembly, that in some of the circuits of this commonwealth, the courts have withheld the compensation to the commonwealth's attornies for the year 1811:

*Be it therefore enacted,* That in all such cases the same procedure shall be had that regulated the compensation to the said attornies in the year 1810.

#### CHAPTER CCCXCIX.

*An ACT further to amend the law altering the mode of taking in Lists of Taxable Property.*

Approved February 8, 1812.

**Sec. 1.** *BE it enacted by the general assembly of the commonwealth of Kentucky,* That each and every person subject to taxation, who shall remove from the bounds of one militia company to that of another, within this commonwealth, between the 10th day of March and the first day of August, shall give in his, her or their lists of taxable property, to the commissioner into whose bounds

persons removed from one company to another, where to



he, she or they may so remove; and any person failing or refusing to give in their list as aforesaid, shall be subject to the same penalties as other persons are, for failing or refusing to give in their lists of taxable property: *Provided however*, that no person shall be liable to any fine or penalty, who may produce to the commissioner of tax, into whose bounds he, she or they may have so removed, a certificate from some other commissioner, that he, she or they have given in their lists of taxable property for that year; which certificate the commissioner who may have received such lists, shall be bound to give, on application.

1811.

Penalty on failure.

Provido.

Sec. 2. *And be it further enacted*, That when from any cause whatever, the company musters shall not be appointed for the months of April and June, the commissioner shall be governed by the muster days of such company the preceding year, and shall advertise and attend accordingly; and any person failing or refusing to attend such appointment, and giving in his, her or their lists as aforesaid, shall be liable to the fine imposed by the seventh section of the act altering the mode of taking in lists of taxable property, approved January 30th 1810.

Duty of commissioners in certain cases.

Sec. 3. *And be it further enacted*, That it shall be the duty of each and every commissioner of tax, to make personal application to each and every widow, subject to taxation, in the bounds of his precinct; and also to each and every other person within his said precinct, subject to taxation, who from known age or infirmity, may be unable to attend at either of the company musters, or the commissioner's house.

Further duty of commissioners.

Sec. 4. *And be it further enacted*, That it shall be the duty of the several commissioners of tax to make out their returns of taxable property in alphabetical order; in which they shall enter their own property subject to taxation, and return the same to the clerk of their county court, on or before the 15th day of August.

Sec. 5. *And be it further enacted*, That the several commissioners aforesaid shall give information to the court of their county, of each and every person who may fail or refuse to give in their lists of taxable property, at any time before the first day of November, agreeable to the provisions of the aforesaid act.

## DECEMBER SESSION.

1811. *Sec. 6. And be it further enacted,* That the several county court clerks shall hereafter make out three alphabetical books, agreeable to the act to which this is a supplement; one of which he shall transmit to the auditor of public accounts, on or before the fifteenth day of October.

Duty of clerks  
of county courts

## CHAPTER CCCCX.

*An ACT for the appropriation of Money.*

Approved February 8, 1812.

This is the ordinary appropriation bill.

# APPENDIX N<sup>o</sup>. I.

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## A REVIEW OF THE ACTS OF ASSEMBLY REGULATING CONVEYANCES.

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**I**N the following observations, I shall not attempt to give any detail of judicial decisions: on many of the points discussed, none have been rendered, and the decisions which have been had, are very unsatisfactory: partly because they appear to contradict both the letter and spirit of the acts of assembly; and partly because they are utterly irreconcilable with each other.

The act of 1748, is the basis of the statute law in this state on this subject, and therefore will merit an attentive consideration.

### CHAPTER I.

*An ACT for settling the Titles and Bounds of Lands, and for preventing unlawful Hunting and Ranging.*

**I.** *BE it enacted by the lieutenant governour, council, and burgesses, of this present general assembly, and it is hereby enacted, by the authority of the same, That no lands, tenements, or hereditaments, within this colony, shall pass, alter, or change, from one to another, whereby an estate of inheritance in fee simple, fee taille, general or special,*

*Or any estate for life or lives,*

*Or any greater or higher estate,*

*Shall be made, or take effect, in any person or persons,*

*Or any use thereof to be made, by bargain and sale, lease and release, deed of settlement to uses of feoffment, or other instrument,*

Unless the same be made by writing, indented, sealed, and recorded,

In the records of the general court,

Or of that county court where the land mentioned to be passed or granted shall lie,

In manner following, that is to say: If the person or persons who shall make and seal such instrument of writing shall be resident within this colony at the time of making and sealing the same,

Then the recording thereof shall be within eight months from the sealing and delivery;

And if the person or persons so making and sealing shall be resident in any other place than within this colony at the time aforesaid,

Then the recording shall be within two years from the sealing and delivery.

But no such deed or conveyance whatsoever of lands, tenements, or hereditaments, shall be admitted to record in the general court, or in any county court, unless the same be acknowledged in such court by the grantor or grantors thereof *in person*,

Or by some or one of them,

To be his, her, or their, proper act and deed;

Or else that proof thereof be made, in open court,

By the oath of three witnesses at the least.

II. And that when any such deeds or conveyances shall be acknowledged or proved in court, in order to their being recorded, the livery of seisin thereupon made, in such cases where the same is by law required, shall in like manner be acknowledged or proved, and shall be recorded together with the deed or conveyance whereupon it shall be made.

III. And that all deeds, mortgages, and other settlements and conveyances, for any lands, tenements, or hereditaments, within this dominion, *bona fide* made and executed, at any time before the third day of June, in the year of our Lord one thousand seven hundred thirty-five, whether the same be by deed poll, or otherwise, shall be good, valid, and binding, between the parties thereto, and their heirs, notwithstanding the same have not been acknowledged, or proved and recorded.

IV. And that all bargains, sales, and other conveyances whatsoever,

Of any lands, tenements, or hereditaments,

Whether they be made for passing any estate of freehold or inheritance, or for term of years,

And all deeds of settlement upon marriage;

Wherein either lands, slaves, money, or other personal thing, shall be settled or covenanted to be left or paid at the death of the party, or otherwise,

And all deeds of trust and mortgages whatsoever,

Made and executed at any time after the said third day of June, one thousand seven hundred thirty-five, and before the passing of this act,

And all such deeds and conveyances which shall hereafter be made and executed,

Shall be void, as to all creditors, and subsequent purchasers,

Unless they have been or shall be acknowledged, or proved and recorded, according to the directions of this act;

But the same, as between the parties, and their heirs, shall nevertheless be valid and binding.

V. *And be it further enacted, by the authority aforesaid,* That all deeds and conveyances heretofore made, or hereafter to be made, in writing, indented and sealed by husband and wife,

And by them personally acknowledged in the general court,

Or county court (the wife having been first examined by such court privily and apart from her husband, and giving her free consent to the same) shall be and are hereby declared to be good and effectual in law,

And shall be as valid to convey and pass over all the estate, right, title, interest, claim, and demand, of such wife, and her heirs, in or to the lands, tenements, or hereditaments, so granted or conveyed,

Whether the same be in right of dower or fee simple,

Or whatsoever other estate, not being fee tail, she may have therein,

As if the same had been done by fine and recovery, or by any other ways or means whatsoever;

And that where any *feme covert* hath heretofore relinquished her right of dower in lands or tenements, and acknowledged the same in court, or before commissioners, and such acknowledgment has been recorded, the same shall be sufficient and effectual in law to convey and pass over all such right, although she has not executed and acknowledged any deed or conveyance for that purpose.

VI. And that where any *feme covert* cannot conveniently travel to the general court or county court to acknowledge her deed for passing away her estate, it shall be lawful for

the clerk of the general court, or of any county court, to issue a commission to two or more commissioners, being justices of the peace in the county where such *feme* resides, for receiving the acknowledgment of any deed of such *feme covert*; for passing her estate in any lands, tenements, or hereditaments; and such deed acknowledged before them after they shall have examined her privily and apart from her husband touching her consent, and thereof certified the judges, before whom such commission shall be returnable, shall be recorded, together with the commission and return, and shall be as effectual as if the same had been personally acknowledged in court by such *feme covert*. And where any such deed shall have been heretofore acknowledged before commissioners, and they have certified the privy examination and acknowledgment as aforesaid, the same is hereby likewise declared to be valid, and so shall be adjudged, deemed, and taken.

VII. And whereas it has always been adjudged that when a deed has been acknowledged by a *feme covert*, and no record made for her privy examination, such deed is not binding upon the *feme* or her heirs:

VIII. *It is hereby further enacted, and declared*, That the law herein shall always be held according to the said judgments, and shall never hereafter be questioned; and that the clerks of the courts, before whom any deed of a *feme covert* shall be acknowledged, shall always hereafter record her privy examination:

IX. And to the end persons who are inclined to lend money upon the security of lands, negroes, and other estate, or to become purchasers thereof, may more easily discover whether the lands, slaves, or other things offered to be sold, or mortgaged, be free from prior incumbrances:

X. *Be it further enacted, by the authority aforesaid*, That a memorial of all bargains, sales, mortgages, and other conveyances, marriage settlements, and deeds of trust, whereby any estate, real or personal, of any person or persons whatsoever within this colony, may be affected, charged, or encumbered, shall be registered in the secretary's office, in books kept for that purpose, which memorial shall contain the date of the deed or conveyance, the names, surnames, and additions, of the parties thereto, the consideration mentioned therein, the quantity of land conveyed, settled, or mortgaged, and where the same lies, and the number and names of the slaves, and description of the personal estate, if any be sold, settled, or mortgaged; and the clerks of all and every

the county courts within this dominion are hereby required, twice in every year, that is to say in the months of April and October, to transmit to the secretary's office memorials of all such deeds, settlements, mortgages, or other conveyances, as shall have been acknowledged, or proved and recorded, in their respective courts, the preceding half year, and of all such of the said deeds as shall be recorded in the general court, the clerk of the secretary's office shall enter memorials in the register to be kept by him for that purpose.

It is necessary to premise, that the statutory mode of conveyance, of which this act constitutes a prominent part, is not the natural mode, but directly the reverse of it. Delivering actual possession of the thing transferred, whether personal or real, is the natural mode of conveyance; delivering possession of a deed, or instrument, in writing, signed and sealed, describing the thing conveyed, is the statutory mode. In the one case, the thing transferred is delivered; in the other, merely a symbol or emblem of it: and the substance is directed by positive law to follow the symbol: or the body is commanded to follow the shadow.

Both these modes of conveyance existed concurrently for a long time in England; and perhaps still do; and both exist concurrently in this country, in relation to every species of personal property. But as to lands, the natural mode of transfer is no longer legal.

The legislature of 1748, appear to have had two cardinal objects in view: First, to render conveyances of real estate so formal and solemn that no man should have any pretence for denying them. Secondly, to render them so notorious that subsequent purchasers and creditors might be in no danger of being deluded, by the possession being in one person, while the right was in another.

The legal effect of the first section is—to render void and ineffectual, the natural mode of conveyance; and every artificial or symbolical mode then in existence, or which might thereafter be devised, except those dictated by this act. It may perhaps be superfluous to observe, that after the passage of this act, conveyance by livery and seizin could no longer exist, as such; although the effects of such a conveyance might in some possible cases still be produced; as if a man should put another in possession of land, and he should remain so long in possession, that a writ of right would be barred: in which case the tenant would hold against all the

world: not on account of right in himself, but on account of want of remedy in his adversary.

The method of conveyance introduced by this act is *unique* as to its execution, and in the *alternative*, as to recording. It must be by writing, indented, sealed, and recorded. It is questionable whether under this act a deed is good between grantor and grantee, unless it shall have been recorded: there is certainly an apparent contradiction between the first and fourth sections, which may be reconciled in the following manner: The first section requires deeds to be recorded within eight months from the time of sealing and delivery; and directs what measure of proof shall be necessary in order to their admission to record. But it does not repeal the common law upon the subject of recording or enrolling deeds; and although that may have been so far varied by this act as to prevent a deed from being recorded, unless acknowledged by the grantor, or proved by three witnesses, yet as at common law a deed might be enrolled *at any time*, it is presumed that on the measure of proof required by this act, it might still be done, and if done *after* the expiration of eight months, it would be void as to creditors and purchasers, but valid between the parties, it must have been recorded, yet it need not be recorded "*according to the directions of this act*," but if not recorded according to the directions of this act, although recorded, it was void as to purchasers. Another consequence of recording it, according to the directions of this act, appears to have been, that if it was *so recorded*, it would take effect as a deed from the time of its execution; but if not recorded until after the expiration of the eight months, it would take effect, only, from the time of its being actually recorded.

I am aware that the opinions here expressed, have been negatived by the court of appeals of Virginia.

There is a maxim of law that the date expressed on the face of a deed, is no material or essential part of it. It is worthy of enquiry whether that maxim can apply to deeds proved or acknowledged under this act; or whether, in other words, every part of the deed must not be proved, or acknowledged, according to the words of the act. It must be acknowledged or proved within eight months, or two years, as the case may be, from the sealing and delivery. It seems to follow, that the court must either take the date expressed in the deed, as the time of its sealing and delivery, or must examine the witnesses or grantor expressly to that point.



The difference of time given to residents, and non-residents, likewise merits attention. As the legislature have fixed the residence at the time of executing the deed, if a man was a resident at that time, and immediately afterwards removed out of the colony, he had only eight months to have it recorded in; but if he was a non-resident at that time, and immediately afterwards removed into the colony, he had nevertheless two years. The provision for recording it either in the county where the land lay, or in the general court, produces the question, if the land lay part in one county, and part in another, could the deed be recorded in either county? It is presumed that it could not; but in that case, *must* be recorded in the general court. It may likewise be remarked, that no respect is paid to the residence, either of grantor or grantee, in designating the place where the deed shall be recorded. It was the transfer of the *land itself* to which the notoriety was to be attached; and not to the person of the proprietor of it.

It may be further observed on this section, that to bring a deed within the provisions of this act, it must have been *actually recorded* within eight months from the time of sealing and delivery. It is likewise to be observed, that this act does not require any subscribing witnesses: even the witnesses who are to attest to the execution of the deed, are not required to subscribe.

It is to be remarked, that no time is fixed by the act of assembly, for this proof or acknowledgment to be made: it must *precede* the recording, and the recording must be within eight months, after sealing and delivery: as the act has dispensed with the attestation of witnesses required by the common law, it is not improbable that the legislature intended the proof or acknowledgment in court, to supply their place, and to consider the deed *unexecuted* until that was done; and of course to date the consummation of the deed, from the time of that proof or acknowledgment.

It is further to be remarked, that deeds *indented*, are the only deeds acknowledged legal by this act for passing freehold estate: and although the courts of Virginia have decided, that an actual indentation is not necessary; *where the deed purports to be an indenture*, yet it remains to be decided whether a deed poll, viz. one that *neither is indented, nor purports to be so*, is valid.

The fourth section is confused and embarrassed: we may however remark, that it requires leasehold conveyances to be

recorded; and that it likewise requires mortgages, and deeds of trust to be recorded: these latter kind of conveyances were probably thought not to be included in the first section, but only such as pass a beneficial and absolute interest to the grantee. But it requires deeds of settlement of personal property, and of money, to be recorded "according to the provisions of this act." This act requires them to be recorded in the county where the land lies, or in the general court: suppose a deed of conveyance or a deed of settlement of personal property only, or of money only, where must it be recorded? This section, after using phrases sufficiently comprehensive, to include every species of conveyance, and declaring that unless recorded, according to the directions of this act, they shall be void as to all creditors and subsequent purchasers, concludes by declaring that between the parties and their heirs, they shall nevertheless be valid and binding. We may hereupon remark, that they are rendered void as to all creditors: the act uses no expressions which confine its operation to such creditors as had at the time executions or judgments, or to debts which then existed, or to creditors who had personal knowledge of the deed or transfer; but seems to protect *all* debts, how long soever after contracted, and with whatever knowledge of the conveyance, they might have been contracted. As to purchasers, if they were subsequent to the conveyance, it was all that was required by this act to bring them under its protection: whether they had notice of a prior conveyance, or not, appears to have been immaterial.

The fifth section provides a way in which a married woman may convey, not only her right of dower, but every interest whatever which she may have in lands, and renders it expressly a substitute for a conveyance by fine and recovery. The mode of doing this is by personal acknowledgment, of the husband and wife, in open court; the wife having been first privately examined. The act says personally acknowledged in the general court, or county court, without the words "of the county in which the land lies;" but as the deed of the husband would not be valid, if acknowledged in any other county court, there is no doubt that such was the court intended.

The sixth section provides for a wife's relinquishment of her estate, where she cannot conveniently travel to the county court for that purpose. It shall be lawful for the clerk to issue a commission, to two or more commissioners, being

justices of the peace, &c. It is remarkable that there is no mention of any order of court, or any affidavit, or other evidence, or suggestion, of its being inconvenient for the wife to attend the court. So that in effect, the clerk might issue this commission, in every possible case, whether there was in truth, any inconvenience or not: and it is believed such relinquishment would not be set aside, because a commission had issued in a case where it was perfectly convenient for the wife to have attended the court in person.

The commissioners seem to be required to certify, that they have examined her privily and apart from her husband, and that on such examination, she gave her free consent to the same; but it is not stated that she must seal or deliver the deed in their presence: that it is presumed must be done before the deed is brought into court (or before it is brought before the commissioners) and is only to be *acknowledged* there, as their or her act or deed: and it seems that a deed by husband and wife could not be proved by witnesses, but must be personally acknowledged.

It is likewise worthy of observation, that wherever an acknowledgment is spoken of in this act, it is required to be personal, and there is nothing which gives room to believe that any thing can be substituted in lieu of it.

The seventh section shews, that there is at least one case, in which recording is essential to *passing the right*, under this act. Unless the privy examination of the wife shall have been recorded, the deed is not binding on her or on her heirs. Hence, although the deed may have been executed, and although her examination may have been certified, yet if it shall not have been recorded, it is not binding. But this cannot be recorded, unless the deed of which it is an appendage, is also recorded.

The eighth section declares that the law, that the privy examination ought to be recorded, shall never hereafter be questioned: and that all clerks where the deed shall be acknowledged shall record her privy examination.

The tenth section makes provision for keeping in the secretary's office, a memorial of conveyances. The descriptive words are bargains, sales, mortgages, and other conveyances, marriage settlements, and deeds of trust whereby any estate, real or personal, &c. may be affected, charged, or incumbered. This memorial is required (amongst other things) to contain the date of the deed; but is not required to contain the time of its acknowledgment or proof.

The act of 1776 comes next in order.

CHAN. REV. PAGE 42, CHAP. XVI.

*An ACT to enable persons living in other countries to dispose of their Estates in this Commonwealth with more ease and convenience.*

I. WHEREAS the several acts of assembly which require the recording of deeds, and other conveyances of lands and tenements within this commonwealth, have been found beneficial, and a very great security to creditors and purchasers, but the necessity of an acknowledgment, or proof by witnesses, of the execution of such deeds, being made in open court previous to their admission to record, hath made it very difficult and troublesome for the proprietors of lands who reside in other countries to convey or settle their said lands, and it hath been doubted whether any *feme covert*, being out of the commonwealth can legally pass her estate in lands here by conveyance, in which she may be willing to join with her husband, no certain and determinate method having been provided for the privy examination of such *feme covert*, essentially necessary to give validity to her conveyance :

II. *Be it therefore enacted, by the general assembly of this commonwealth, and it is hereby enacted by the authority of the same,* That from and after the passing of this act all deeds and conveyances whatsoever made in writing, indented and sealed

By any person or persons whatsoever residing in any other country, for passing any lands and tenements, or other estate situate in this commonwealth,

Which shall be acknowledged by the party or parties making the same,

Or proved by three or more witnesses to be his her or their act and deed,

Before the mayor or other chief magistrate, of the city, town, or corporation, wherein,

Or near to which,

He she or they shall reside,

And such acknowledgment or proof, certified by the mayor or other chief magistrate, under the common seal of the said city, town, or corporation, annexed to the deed,

Shall be admitted to record in the general court,

Or court of the county where the lands or other estate lie,

And shall be as effectual for passing the estate therein mentioned as if the conveyance had been acknowledged or proved in such court ;

Or where the parties making such deeds shall reside in any of the states of America,

and there shall happen to be no city or town corporate within the county wherein they shall dwell,

A certificate under the hands and seals of two justices or magistrates of the county,

That such proof or acknowledgment hath been made before them,

Together with a certificate from the governor, under the seal of such state,

Or from the clerk of the county court, under the common seal of the county,

That the persons certifying such proof or acknowledgment are justices or magistrates within the same, shall authorise the recording of such deeds, and make them effectual as aforesaid.

III. *Provided always, and be it further enacted, That* where any person, making such conveyance, shall be a *feme covert*, her interest in any lands or tenements shall not pass thereby unless she shall personally acknowledge the same before such mayor or other chief magistrate, or before two justices or magistrates as aforesaid,

According to her place of residence,

And be by him or them previously examined, privily and apart from her husband,

Whether she doth the same freely and voluntarily,

And without his persuasions or threats,

And a certificate made as before directed of such privy examination, and her free acknowledgment of the deed or conveyance ;

But upon such certificate annexed to the deed or conveyance being produced to the general court,

Or court of the county wherein the lands lie,

The same shall be admitted to record, and be as effectual for passing the estate of such *feme covert*, in the lands mentioned in the conveyance, as if such *feme* had acknowledged the same in open court, and been there privily examined.

IV. And whereas many *femes covert*, residing out of this commonwealth, have heretofore joined with their husbands in making deeds or settlements of their estates here, and have acknowledged the conveyances, after a privy examination, before such mayor or other chief magistrate, without any commission, or before two justices or magistrates of the county where she resided, by virtue of commissions issued from the courts here, and others have acknowledged deeds without any certificate of their privy examination, and doubts may

arise about the validity of such deeds or settlements, where by *bona fide* purchasers, or persons claiming under family settlements, made upon good and legal considerations, may be involved in great expense and difficulties :

V. For prevention whereof, *be it further enacted, by the authority aforesaid*, That all deeds and settlements heretofore *bona fide* made by any husband and wife residing out of this commonwealth, for conveying or settling the lands of the wife, which have been personally acknowledged by her, and a certificate made thereof, and of her privy examination before the mayor or other chief magistrate of a city, town, or corporation, under the common seal, though no commission hath issued for taking the same, or where a certificate hath been made of such privy examination and acknowledgment before two justices or magistrates, by virtue of a commission issued for that purpose from the general court, or court of the county where the lands lie, and the deeds and certificates have been recorded, in either case such conveyance shall be as effectual for passing the estate of the *feme covert* thereby conveyed as if she had been privily examined, and made the acknowledgment in open court.

VI. *And be it further enacted, by the authority aforesaid*, That where any deed hath heretofore been made by any husband and wife residing out of this commonwealth, of her lands, and the same hath been admitted to record, upon proof or certificate of her having acknowledged the same without any certificate of her privy examination, in one of the ways before mentioned, it shall and may be lawful for the clerk of the court where the deed is recorded, at the request of the person or persons claiming under the same, to issue a commission for taking the privy examination and acknowledgment of the *feme*, to be directed to the mayor or other chief magistrate of a city, town, or corporation ; or if she resides in America, to two justices or magistrates, as before directed, whose certificates, under seal as aforesaid, of the privy examination and free acknowledgment of such deed by the *feme*, being returned with the commission and deed annexed, shall be recorded, and be as effectual as if the *feme* had been privily examined, and acknowledged the deed in court.

VII. And whereas several persons have purchased lands in this commonwealth, from commissioners and sheriffs who sold the same under decrees and judgments of the courts of this commonwealth whilst it was the colony of Virginia, which purchasers, notwithstanding they have conveyances from

such commissioners and sheriffs, have only an equitable title to such lands, which in many instances may prejudice the interest of such purchasers, and those claiming under them :

VIII. *Be it further enacted, by the authority aforesaid,* That all conveyances of commissioners and sheriffs heretofore made for lands sold in virtue of any decree or judgment of any court within this commonwealth, as aforesaid, and all such conveyances which shall hereafter be made, shall be, and they are hereby declared to be good and effectual for passing the absolute title of such lands to the purchasers thereof, and all persons claiming under them, any law to the contrary, notwithstanding; saving to the commonwealth, and to all and every other person and persons, bodies politic and corporate, their respective heirs and successors, other than the parties to such conveyances, decrees, or judgments, and those claiming under them, all such right, title, interest, and demand, as they, every, or any of them, would have had in case this act had not been made.

IX. *Provided always,* That nothing in this act contained shall extend to any conveyance now in controversy in any suit commenced, and actually depending, in any court within this commonwealth.

This act professes to have two principal objects in view : First, to enable non-residents to convey their lands, lying in Virginia, without coming there themselves, to acknowledge the deeds, or having the witnesses brought to prove the execution of them. Secondly, to enable *femes covert*, not being in Virginia, to execute deeds of conveyance, for lands lying there. A slight examination of acts of 1748, will shew, that no non-resident could effect a legal conveyance, under that law, without either coming personally to Virginia, or having the witnesses brought there ; and no part of that act provided means by which a *feme covert*, not living in some county in the colony of Virginia, could execute a deed. The first of those cases is provided for, in the second section of this act. In this act mortgages, and deeds of trust, and marriage settlements, are omitted ; and it is questionable whether either of them, are embraced under the general expressions of "all deeds of conveyance whatsoever." It is also questionable whether deeds for personal property, only, came within the provisions of this act : the words are lands and tenements or other estate situate in this commonwealth : the word situate, applies I believe exclusively to real, or as the civilians term

it, immoveable estate. The deed must be acknowledged by the party or parties making the same, or proved by three witnesses, before the mayor or other chief magistrate, of the city, town, or corporation, wherein, *or near which*, the party making it resides, and such acknowledgment or proof, certified by the mayor or other chief magistrate, under the common seal of the said city, town, or corporation, annexed to the deed, shall be admitted to record, and be as effectual for passing the estate, &c. It is obvious that whether a seal or scroll, or whatever device is used, in this certificate, it must be the common seal of the corporation, and must be stated as such in the certificate.

The latter member of this section relates entirely to the confederated colonies; and provides that where the party resides in any of the American states, and there shall be no city or town corporate in the county in which he dwells, a certificate under the hands and seals of two justices or magistrates of the county, of the proof or acknowledgment, together with a certificate of the governor, under the seal of the state, or from the clerk of the county court, under the common seal of the county, that such persons are justices or magistrates within the same, shall authorise the recording, and render effectual such deeds. We may hereupon remark, that if such person lives within any of the American states, and at the same time lives near to any city, town, or corporation, in another county, he is not required by this act to go out of his county to make the acknowledgment, though it might probably be lawful for him so to do. But if in the county in which he lived, there was a mayor or other chief magistrate, of any city, town, or corporation, an acknowledgment or proof before the justices of the county, would be no compliance with the act: for it is only in cases where none such exist, that an acknowledgment before the county magistrates, is permitted. This act makes no alteration as to the mode of executing a deed, or the effect it shall have when executed, but is confined entirely to the proving or acknowledging them in foreign parts, and the authentication of that proof or acknowledgment in Virginia. It may be proper also to remark, that where the acknowledgment or proof shall be certified under the common seal of the mayor or chief magistrate of a city, town, or corporation, this seal is placed on the footing of a state seal: that is, it proves itself, and it is only where the acknowledgment or proof is made before county officers, that the seal of the state, or of the county, is required, and in this



case the county seal, answers the same purpose as the state seal.

The provision for *femes covert* conveying their lands, is as ample as that of 1748; is not confined to dower, but extends to every interest she can have in lands or tenements: her personal acknowledgment is required, and her privy examination before the same judicial officers as in other cases, according to her place of residence.

A question, on the decision of which immense interests may depend, arises on this act, viz: whether when a deed comes certified by two county magistrates, it is to be presumed that there is no mayor, &c. in the county, or how that fact is to be made appear? On the one hand, it may be said that the justices are not required to certify any thing, except the proof or acknowledgment of the party; on the other hand, it may be alleged that the party who has a deed so acknowledged, comes not within the general provisions of a statute, but within a special proviso, and that therefore it is incumbent on him to shew that he is entitled to the benefit of it. Perhaps the proper way of bringing this matter before the court, would be to take exceptions to the deed's being read as a recorded deed, until the person claiming under it should shew, that there was no such city officer, &c. in the county. But as in no case out of the United States, an acknowledgment or proof before county magistrates was permitted, so if in any state or territory within the United States, there was no county, the acknowledgment or proof must be made before a judicial officer, of the nearest city, &c. unless, perhaps, that officer should be in an adjoining state, in which counties existed. But if there was any part of the United States in which none of these officers existed, it was clearly a case not provided for, by this act. *Proof* of the husband's acknowledgment may be made, under this act, which it seems could not be done, under the act of 1748.

In the latter part of this act, the legislature declare, that deeds made by sheriffs and commissioners in chancery, transfer to the grantee an equitable interest only. As to deeds for land made by a sheriff, they could exist only in cases where a man had taken the benefit of the insolvent debtors' act; and delivered up his property: in such case the act had declared that it should be vested in the sheriff of the county where the land lay, and he should convey it. This would seem to pass a legal estate. But it is probable that in both cases the legislature considered the assent of the proprietor,

and the sealing and delivery of the deed *by him*, essential to a legal conveyance ; and they were certainly all requisite under the letter of the act of 1748. This act then, is the first inroad upon the strongly guarded system of conveyance, confirmed by that act. As to sales made by commissioners in chancery, they must have been confined generally to decrees of foreclosure, &c. If any other except the mortgagee should be the purchaser, there would not be a clear connection of conveyance by specialty. It may be further remarked on this act, that the acknowledgment or proof required, was prescribed by the law of Virginia, as well as the substance of the certificate, and the mode of authenticating it ; and the judicial officers who acted under it, however remote they might be, to whatever nation they might belong, were *pro hac vice*, officers of the colony of Virginia.

Our remarks on this act may be concluded by observing, that it made no alteration as to the time within which a deed executed by a non-resident might be recorded : this time was by the act of 1748, two years, and remained so under this act.

The next act in order of time, is one passed in the year 1785, which took effect from and after the first day of January 1787. It has no repealing clause, and consequently repeals no former acts, further than is necessarily done by its introducing provisions incompatible with them.

## CHAPTER XLII.

### *An ACT for regulating Conveyances.*

Sec. 1. *BE it enacted by the general assembly*, That no estate of inheritance, or freehold, or for a term of more than five years, in lands or tenements, shall be conveyed from one to another unless the conveyance be

Declared by writing, sealed and delivered ;

Nor shall such conveyance be good against a purchaser, for valuable consideration, not having notice thereof,

Or any creditor,

Unless the same writing be acknowledged by the party or parties who shall have sealed and delivered it,

Or be proved by three witnesses to be his, her, or their act,

Before the general court,

Or before the court of that county, city, or corporation, in which the land conveyed,

Or some part thereof, lieth,

Or in the manner herein after directed,

Within eight months after the time of sealing and delivering,  
And be lodged with the clerk of such court, to be there recorded.

No covenant or agreement made in consideration of marriage shall be good against a purchaser, for valuable consideration, not having notice thereof,

Or any creditor,

Unless the same covenant or agreement be acknowledged by the party bound thereby,

Or be proved by three witnesses to be his, her, or their act;

If land be charged before the general court;

Or the court of that county in which the land

Or part thereof lieth,

Or if personal estate only be settled,

Or covenanted, or agreed to be paid or settled,

Before the court of that county in which such party shall dwell,

Or in the manner herein after directed,

Within eight months after the covenant or agreement made,

And be lodged with the clerk of such court, to be there recorded:

If the party who shall sign and seal any such writing reside not in Virginia,

The acknowledgment by such party, or the proof by the number of witnesses requisite, of the sealing and delivering of the writing,

Before any court of law,

Or the mayor, or other chief magistrate,

Of any city, town, or corporation

Of the county in which the party shall dwell,

Certified by such court, or mayor, or chief magistrate,

In the manner such acts are usually authenticated by them,

And offered to the proper court to be recorded,

Within eighteen months after the sealing and delivering,

Shall be as effectual as if it had been in the last mentioned court.

When husband and wife shall have sealed and delivered a writing, purporting to be a conveyance of any estate or interest, if she appear in court, and being examined privily, and apart from her husband, by one of the judges thereof,

Shall declare to him that she did freely and willingly seal and deliver the said writing,

To be then shewn and explained to her,  
And wishes not to retract it,  
And shall, before the said court,  
Acknowledge the said writing, again shewn to her,  
To be her act,  
Or if before two justices of the peace of that county in  
which she dwelleth,  
If her dwelling be in the United States of America,  
Who may be empowered by commission to be issued by  
the clerk of the court wherein the writing ought to be record-  
ed,  
To examine her privily, and take her acknowledgment,  
The wife being examined privily and apart from her hus-  
band, by those commissioners,  
Shall declare that she willingly signed and sealed the said  
writing,  
To be then shewn and explained to her, by them,  
And consenteth that it may be recorded ;  
And the said commissioners shall return with the commis-  
sion, and thereunto annexed,  
A certificate, under their hands and seals, of such privy  
examination by them,  
And of such declaration made, and consent yielded by her,  
In either case the said writing acknowledged also by the  
husband,  
Or proved by witnesses to be his act, and recorded, toge-  
ther with such her privy examination and acknowledgment  
before the court,  
Or together with such commission and certificate,  
Shall not only be sufficient to convey or release any right  
of dower thereby intended to be conveyed or released,  
But be as effectual for every other purpose as if she were an  
unmarried woman.  
If the dwelling of the wife be not in the United States of  
America,  
The commission to examine her privily and take her ac-  
knowledgment, shall be directed to any two judges or justices  
of any court of law,  
Or to the mayor, or other chief magistrate of any city,  
town, or corporation of the county in which the wife shall  
dwell,  
And may be executed by them in the same manner as a  
commission directed to two justices in the United States of  
America ;

and the certificate of the judges or justices of such court, or the certificate of such mayor or chief magistrate,

Authenticated in the form, and with the solemnity by them used in other acts,

Shall be as effectual as the like certificate of the Justices in the United States of America.

The clerk of every court shall record all writings acknowledged, or proved before such court, or certified to have been acknowledged or proved, in manner before prescribed, together with the commissions for privily examining and taking the acknowledgments of married women, and all endorsements on such writings, and plots, schedules, and other papers thereto annexed, by entering them, word for word, in well bound books, to be carefully preserved, and afterwards redeliver them to the parties entitled to them; and shall moreover make a docket of all such writings, containing the dates thereof, and of the acknowledgments and probats, the names, surnames, and additions of the parties thereto, in alphabetical order, and the quantities and situations of lands, numbers and names of slaves, and descriptions of personal estate conveyed thereby; and the clerk of every county court shall transmit such docket made by him to the clerk of the general court, in every April and October term, to be recorded by him. Every estate in lands or slaves, which on the seventh day of October, in the year of our Lord one thousand seven hundred and seventy-six, was an estate in fee tail, shall be deemed from that time to have been, and from thence forward to continue, an estate in fee simple; and every estate in lands, which since hath been limited, or hereafter shall be limited, so that as the law aforetime was, such estate would have been an estate tail, shall also be deemed to have been and to continue an estate in fee simple: and all estates, which before the said seventh day of October, one thousand seven hundred and seventy-six, by the law, if it remained unaltered, would have been estates in fee tail, and which now, by virtue of this act, are and will be estates in fee simple, shall from that time and henceforth be discharged of the conditions annexed thereto by the common law, restraining alienations before the donee shall have issues, so that the donees or persons in whom the conditional fees vested, or shall vest, had, and shall have, the same power over the same estates as if they were pure and absolute fees. Every estate in lands which shall hereafter be granted, conveyed or devised to one, although other words heretofore necessary to transfer an es-

rate of inheritance be not added, shall be deemed a fee simple, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised, by construction or operation of law. Where an estate hath been or shall be by any conveyance limited in remainder to the son or daughter, or to the use of the son or daughter of any person, to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in the same manner as if he or she had been born in the life time of the father, although no estate shall have been conveyed to support the contingent remainder after his death. By deed of bargain and sale, or by deeds of lease and release, or by covenant, to stand seized to use, or deed operating by way of covenant, to stand seized to use, the possession of the bargainer, releaser, or covenantor, shall be deemed heretofore to have been, and hereafter to be transferred, to the bargainee, releasee, or person entitled to the use, for the estate or interest which such person hath or shall have in the use, as perfectly as if such bargainee, releasee, or person entitled to the use, had been enfeoffed with livery of seizin of the land intended to be conveyed by such deed or covenant. Estates of every kind, holden or possessed in trust, shall be subject to like debts and charges of the persons to whose use or for whose benefit they were, or shall be respectively holden or possessed, as they would have been subject to if those persons had owned the like interest in the things holden or possessed, as they own or shall own in the uses or trusts thereof. Where any person to whose use, or in trust for whose benefit, another is or shall be seized of lands, tenements, or hereditaments, hath or shall have such inheritance in the use or trust as that if it had been a legal right, the husband or wife of such person would thereof have been entitled to curtesy or dower, such husband or wife shall have and hold, and may by the remedy proper in similar cases, recover curtesy or dower of such lands, tenements or hereditaments. Grants of rents, or of reversions, or remainders, shall be good and effectual without attornments of the tenants, but no tenant who, before notice of the grant, shall have paid the rent to the grantor, shall suffer any damage thereby. The attornment of a tenant to any stranger, shall be void, unless it be with consent of the landlord of such tenant, or pursuant to, or in consequence of the judgment of a court of law, or the order or decree of a court of equity.

Sec. 2. This act shall commence and be in force from and after the first day of January, one thousand seven hundred and eighty-seven.

This act declares that no estate of freehold, &c. or for term of more than five years, shall be conveyed, unless the conveyance be declared by writing, sealed and delivered. Under the act of 1748, no leasehold estate for even a quarter of a year, could be transferred without deed. There can be but little doubt that the legislature intended to repeal so much of that act, and permit all leases for five years or under, to rest on common law principles. For all greater estates the declaration of the conveyance by writing under seal, is necessary to passing the right, as between grantor and grantee. The second member of the sentence relates to purchasers and creditors: "Nor shall such conveyance be good against a purchaser, for a valuable consideration, not having notice thereof, or any creditor." The act of 1748, says *all* creditors and subsequent purchasers: the word *any* here, may be considered tantamount to the word *all* in that act: the epithet *subsequent*, which is there introduced, is omitted here; although this act limits it to a particular class of purchasers, viz. those who are purchasers for a valuable consideration, without notice of any unrecorded conveyance. A man under this act must, *First*, be a purchaser: by which I presume he must have a legal estate. *Secondly*, he must be a purchaser, for a valuable consideration. *Thirdly*, he must not have had notice of the unrecorded deed. Thus situated, he may successfully oppose the adversary claim, unless the same writing be acknowledged by the party, or parties, who shall have sealed and delivered it, or be proved by three witnesses to be his, her, or their act, before the general court, or before the court of that county, city, or corporation, in which the land conveyed, or some part thereof lieth, within eight months after the time of sealing and delivering, and be lodged with the clerk of such court, to be there recorded. It is obvious that the provisions of this act are essentially variant from the act of 1748, in the following particulars: *First*, the act of 1748, required the acknowledgment preparatory to recording to be made *in person*. This act omits those words, thereby leaving it to be determined on common law principles, how such acknowledgment may be made. *Secondly*, if there were twenty grantors, and any one of them should make an acknowledgment, it would come up to the requisitions of the act of 1748.

and the deed might thereon be recorded. This act contains no similar provision. *Thirdly*, the act of 1748 is silent as to the time when the acknowledgment or proof shall be made: it requires the deed to be recorded within eight months, and the proof or acknowledgment to be prior to the time of recording it: this act requires the proof to be made within eight months from the time of sealing and delivery, and the deed to be lodged to be recorded within that time, but limits no time for the actual recording it. *Fourthly*, by the act of 1748, no specific provision was made for recording deeds, where part of the land lay in one county, and part in another, but under this act the deed may be recorded in any county in which any part of the land shall lie. *Fifthly*, by the act of 1748, the general court, and county courts, were the only courts in which deeds could be recorded; but under this act they may be recorded in city or corporation courts, provided any part of the land lies within the jurisdiction of such court. *Sixthly*, by the act of 1748 the *acknowledgment* of the husband, to a deed executed by husband and wife, seems indispensable: *proof* is admitted by the act of 1776, in the case of deeds executed abroad. This act admits it in all cases. A question may arise under this act, whether where a deed contains several entire tracts of land, lying in different counties, it will be sufficient to record the deed, in any county in which one of the tracts lies. This would certainly be a compliance with the letter of the act; but it is probable the legislature intended this provision to embrace a case, where a single tract extended from one county to another.

This act is silent as to mortgages, and deeds of trust: covenants and agreements in consideration of marriage, are required to be acknowledged or proved in the same manner as deeds of conveyance, and if land alone, or land and personal estate, be charged to be recorded in the general court, or in the court of the county where the land, or part of it, lies. If personal estate only shall be charged, then the covenant or agreement is to be recorded in the county where the party bound thereby resides. The other provisions respecting recording these contracts, are precisely the same with those respecting deeds of conveyance.

The next provision to be noticed, is where the person who shall sign and seal any such writing, resides not in Virginia. We may remark on the phraseology, that "any such writing" refers to all the writings which had been mentioned before, which were deeds of conveyance, and covenants or



agreements in consideration of marriage. Covenants, or agreements in consideration of marriage, are not deeds of conveyance; and were entirely omitted in the act of 1776, and until the passage of this act, there was no means expressly provided, by which persons being and remaining abroad, could execute such instruments, so as to bar creditors and purchasers in Virginia. It is true they might, under the act of 1748, *execute* them abroad, but they must come to Virginia to acknowledge or prove them, prior to having them recorded: this they might do within two years, and unless it was done they were void. This act (1785) still requires the acknowledgment or proof prerequisite to recording, to be made according to the laws of Virginia; but permits it to be made before any court of law, or the mayor or other chief magistrate, of any city, town, or corporation, of the county in which the party shall dwell. We are here to note the difference of this act from the act of 1776, on the same subject. This act permits the acknowledgment to be made before *any court of law*, of the county where the party shall dwell, which was not permitted by the act of 1776: that act permitted the acknowledgment to be made before a mayor or chief magistrate, of any city, town, or corporation, in which, or, near to which, the person resided; whether such city, town or corporation was in the county or not, or whether the party resided in any county or not; but by this act the court of law, city, town or corporation, must all be *in the county where the person resides*; of course if the country shall not be subdivided into counties, no acknowledgment or proof can be made under this act.

Another important difference between this act and the act of 1776, is, as to the mode of authenticating such acknowledgment or proof. This had been pointed out by the act of 1776, without any respect or relation to the laws of the country in which the acknowledgment or proof was to be made, or in other words, the legislature had *specifically* directed, what should be received as evidence of such acknowledgment or proof. But by the act of 1785, it is required to be certified in such manner, as such acts are usually authenticated, by the foreign courts or judges: thereby making the laws of such country the rule, and referring to the judges of that country, the interpretation and application of them. Under this act, the deed is to be offered to the court to be recorded within eighteen months after the sealing and delivery, which is six months less than the time allowed by the acts of 1748 and 1776.

The next provision applies to the deeds of *femes covert*, in three classes of cases: *First*, where the acknowledgment of the wife is made in open court; in such case she is directed to be examined privily and apart from her husband, *by one of the judges*; whereas the act of 1748, directs such privy examination to be made *by the court*. This act (1785) likewise very explicitly declares, what the acknowledgment of the wife on such privy examination, shall consist of, or amount to, viz. "That she did freely and willingly seal and deliver the said instrument of writing, and wishes not to retract it." This act likewise requires, that it shall be shewn and explained to her by the judge, during her privy examination, and shall "again" be shewn to her in court, and she shall there acknowledge it. The act of 1748 uses the words "giving her free consent," only; the act of 1776, in directing what acknowledgment of the wife shall be certified from abroad, uses the following words—"She doth the same freely and voluntarily, and without his persuasions and threats."

The second class of cases, is where the wife resides within the United States of America, and does not make the acknowledgment in court, but before two justices of the peace. In this case the *dedimus* must be awarded by the clerk of that court, where the writing ought to be recorded, and must be directed to two justices of the peace of that county, in which the wife dwells, who are to proceed in the same manner as the judge is directed to; but in this case the language of her acknowledgment is somewhat different, viz. "That she willingly signed and sealed the said writing, and consenteth that it may be recorded." There is little doubt that under this act every interest in lands which a wife has, however derived, may be divested; although the language is not as strong as in the act of 1748.

This act, without saying any thing respecting the convenience or inconvenience, of the wife's attending the court, renders valid a relinquishment made before justices of the peace, acting under a *dedimus*.

The third class of cases, is where the wife resides out of the United States of America: in such cases the commission is to be directed to any two judges or justices of any court of law, or to the mayor or other chief magistrate, of any city, town, or corporation, of the county in which the wife shall dwell, and shall be executed by them in the same manner as a commission directed to two justices in the United States of America.

We are next to consider, the authentication of the returns made by the commissioners. In speaking of cases where the commission issues to two justices within the United States, the act says the commissioners shall return *with* the commission, and *thereto annexed*, a certificate under their hands and seals, &c. and it seems that in this case, no certificate of the governor, or of the clerk of the court, is requisite. In cases where the commission goes out of the United States, the certificate returned is required to be authenticated "in the form and with the solemnity by them used in other acts."

It is proper here to remark, that the provisions made by this act, respecting the conveyances of *femes covert*, are substantially different from those made by the act of 1776.

That act makes provision for the case of a *feme covert* relinquishing her right to lands, *mero motu*, in foreign countries; without the interference or intervention of any court in Virginia. This makes provision for a *dedimus* to issue, specially empowering certain judicial officers of other countries, to take the acknowledgment and certify it hither. In the latter case they act as officers of the court of Virginia, and as such make an official return on their commission, how they have executed their authority.

The remaining provisions which it is necessary to notice, are directory to the clerk, requiring him to record all conveyances acknowledged, proved, or certified, all commissions for examinations, platts, schedules, &c. and then to deliver the deeds to the parties. He is likewise required to make a memorial, which memorial is to contain, not only the date of the deed, but the date of the *acknowledgment or probat*; differing essentially in this from the act of 1748, which required the date of the deed *only*.

It is observable that the *actual recording* of the deed is not in any manner rendered requisite by this act, to perfecting the title of the grantee to any intent: all that is requisite for that purpose, is that the deed should be proved or acknowledged, and lodged in the clerk's office, *to be recorded*, within eight months from the date: nor is he required to make any memorial, or keep any memorandum of the time of actual recording.

None of these acts made any provision for acknowledging a deed in one court in the state of Virginia, and having it certified by that court to another, and there recorded. All the acts had treated the subject as local; the general court having jurisdiction coextensive with the state, in all matters lo-

cal as well as transitory, was a proper court. But whenever recording a deed for lands was permitted in a court of limited jurisdiction, no respect was had to the residence of grantor or grantee, but the proof or acknowledgment was to be made, and the recording had, in the county where the land lay. This however admits of an exception in the case of *femes covert*: for both by the act of 1748, and by this act, if they made an acknowledgment before commissioners out of court, it was to be in the county in which they dwelt; but if they came into court to make the acknowledgment, it must be in the court in whose jurisdiction the land lay, viz. the general court, or the court of the county in which the land was. But where personal property only, was the subject of the deed, the residence of the grantor gave jurisdiction to the court. This act, as has been mentioned, took effect on the first day of January 1787.

As to the district of Kentucky, it is possible a system of law somewhat variant from the general law of the state prevailed. In the year 1782, a superior court was established in that country, in which says the act "deeds may be admitted to record within the time limited by law, either upon proof or acknowledgment thereof before such court, or upon certificate of such proof or acknowledgment before any other common law court, from the clerk of such court, and under the seal thereof." It is to be observed that this act took effect several years before the act of 1785, and the operation of it appears, at first view, to have been to permit deeds proved before another court, to be recorded without being re-proved or re-acknowledged in the supreme court; and although the phraseology is broad enough to embrace all the common law courts in the commonwealth, yet it is highly probable that no one court, *in the commonwealth*, was intended by it; but that it was a loose and elliptical manner of expressing, what is more fully expressed by the act of 1776, respecting admitting to record deeds acknowledged out of the state. That some doubt or difficulty had arisen, in relation to recording deeds in that court, appears by an act passed in January 1787, the amount of the provision of which respecting this subject, is that "all conveyances for lands within the district, and all deeds admitted to record on proof, acknowledgment, or certificate, shall have the same effect, as an admission to record in the general court would have, in other parts of the state." [1 Litt. 483.] By an act passed in 1784, the clerks of the county courts within the district of Kentucky, were directed to

transmit their memorials to the clerk of the supreme court, instead of the clerk of the general court.

In the year 1786, an act was passed against conveying or taking pretended titles, (2 Litt. 569) the substance of which is as follows: It requires one year's possession of land next before the sale; but this possession may be either in the seller or in those under whom he claims, and if it is a possession of the reversion or remainder only, it is sufficient. Where there is no such possession, the act prohibits the claimant both from conveying and from bargaining to convey the land, and prohibits every other person, both from receiving a conveyance and from entering into any contract to receive one. The penalty for *knowingly* offending, is a forfeiture of the whole value of the lands, one moiety to the commonwealth, and the other to him who will sue, as well for himself as for the commonwealth. It is much to be regretted, that instead of a penalty which, considering the odium attending an informer, and the operation of the act of limitations, renders the law a mere dead letter, the act had not at once declared all such contracts void. I would however suggest the propriety of enquiring whether such contracts were not made void by laws anterior to this act, and whether, if such laws existed, they have been repealed by the act of 1802, section 24th (3 Litt. p. 70). There is a provision in favor of those lawfully in possession, which authorises their purchasing or contracting for any pretended title, so far, and so far only, as it may confirm their former estates.

In the year 1792, the district of Kentucky having now become an independent state, an act was passed on the subject of relinquishing dower (1 Litt. 152).

All the acts hitherto considered, seem to embrace all the interest which a *feme covert* can have in lands, whether inheritance or dower: all the provisions of this act are confined to dower only. The cases provided for are, *first*, where a husband and wife, residing in one county in this state, wish to convey lands lying in another county in the same state: the inconvenience provided against, is the necessity of the husband, at least, having to go to the county where the lands lay, in order to acknowledge the deed. The remedy provided, is permitting two justices of the peace, to take the examination both of husband and wife, in the county where they reside, the wife having been previously examined, apart from her husband, whether she with her own free will and consent, relinquished her right of dower in such lands; the justices are

to certify the same on the deed, under their hands, (their seals are not required, as by the act of 1785) and a *copy* of such deed shall be recorded in the court of the county, within four months. The court here meant, is the county where the grantors reside; but whether the deed is to be recorded within four months from the time of the date of it, or within four months from the time of its being so acknowledged, is uncertain. The clerk shall then certify on the original deed, that a true copy has been recorded in his office; and such deed shall in eight months thereafter, be recorded in the court of the county in which the land shall lie. It is doubtful whether these eight months are to be computed from the expiration of the four months, from the time of the actual recording, or from the date of the clerk's certificate, or from the time of the acknowledgment made before the justices. Two observations occur on this part of the act: *First*, although the title of the law purports to be nothing more than a regulation respecting relinquishment of dower, and recording letters of attorney, yet it introduces, in reality, a new mode of conveying. It appears that a man who has no wife, may pursue this method, as well as one who has, and it appears moreover (contrary to the whole tenor of the act of 1785) that lodging the deed in the office to be recorded, will not be sufficient under this act; but that both the copy and the original must *actually be recorded*, before the conveyance is consummated.

*Secondly*—Where the parties reside in any other state, they may proceed in like manner: that is, the justices may certify the acknowledgment under their hands only, without their seals, except that a copy need not be recorded in the county where the parties reside: but the clerk of the county shall certify on the original deed, under the seal of the county, that the persons certifying the acknowledgment, are justices of the peace, and that full faith and credit is to be given to any act done by them, when acting in their official character; which deed, *when recorded*, in the county in which the land lies, shall be as valid as if it had been acknowledged by the parties, or proved in open court. Provision is made in a subsequent part of the act, for the *ex post facto* relinquishment of dower on deeds already executed and recorded, and a general provision likewise that in all cases where a deed is made by parties residing in the county where the land lies, the *feme covert* may relinquish her dower in like manner. On this act we may remark that a commission or dedimus is unnecessary, in every case provided for by it; that the certi-

ificate of the justices is not in any case required to be under their seals, and in the case of an acknowledgment certified from another state, there is no limitation of time within which the deed shall be recorded, but that it is not rendered valid in any case until actually on record. This act took effect on the 20th day of December 1792: it relates to land only, and to deeds of conveyance in the strictest sense of the word. The act concludes by declaring that conveyances may be executed as heretofore, this act notwithstanding; and we may observe that all the provisions which it contains are positive and permissive. It renders lawful this mode of conveyance, which other acts had rendered unlawful: all the other acts are negative and restrictive; that lands shall *not* be conveyed otherwise than directed by the respective acts.

The provisions of the act of 1785, were specific in pointing out the courts in which deeds should be recorded, and the supreme court for the district of Kentucky occupying the place of general court for the district, all the provisions of the act applied to that district. But an important question may arise, whether, after the organization of that court, a deed for land lying in that district, could legally be recorded in the general court of Virginia. It may be observed, that the phraseology of the act of 1785, is not that upon a deed's being recorded in the office of the general court, &c. it should be valid, but that on its not being recorded in that manner it should be void: hence, if the deed should be void by any other act, or by the grantor's failing to comply with the requisitions of any law, recording it according to the directions of this act, would give no validity to it.

The act of 1785, concurrently with the act of 1792, before mentioned, continued in force in Kentucky as the directing law, until the second day of January 1797, when the Kentucky act regulating conveyances took effect. But on the organization of courts in Kentucky, there was no provision made for admitting deeds to record, in either of the courts of general jurisdiction then established: of course so much of the act of 1785, and of every other act, as related to the acknowledgment or proof of deeds in the general court, and to certifying memorials to that court, ceased to have any operation, until the 10th day of March 1796, when the act of 1795 (1 Litt. 353) took effect. This act provides that deeds, powers of attorney, and other writings, may be admitted to record in the clerk's office of the court of appeals, he taking the acknowledgment or proof, in the same manner as if it was

done in open court. It seems by the phraseology of this act, as if the legislature supposed that they might be recorded in the office of the court of appeals, by being acknowledged in open court, by the then existing laws. This however was not the case; for no law, either expressly or by implication, gave to the court of appeals any authority to receive the acknowledgment of deeds in any case. By the district court law, which passed three days afterwards, and took effect on the same day that this act did, it was declared that all deeds and other writings might be recorded in the office of any district court, provided that if the same be for the conveyance of lands, that the lands conveyed lie within the said district; and if the lands conveyed by one deed, shall lie in part of two districts, the said deed may be recorded in the office of the court of appeals; and it shall be the duty of the clerks of the district courts, and court of appeals, in the cases before mentioned, to receive said deeds in their offices, out of court, taking the acknowledgment and proof of execution, as is directed by law.

It is proper here to note a change of principle and practice, which was effected by these laws. By the act of 1748, the witnesses were to be examined, and the acknowledgment made, *in court*: for however single and uncomplicated the questions might be, arising on the proof or acknowledgment of a deed, they were questions of law, and were of course to be decided by a legal tribunal: and under the act of 1776, the record of acknowledgment made in foreign countries, was to be produced to the court, and on their inspection, and being satisfied with the sufficiency of the certificate, the deed was by them ordered to be recorded. It may not be impertinent here to remark, that the same legal questions which would naturally arise on the plea of *nul tiel record*, would in ordinary cases recur on the production of such certificate. The act of 1785, likewise requires the acknowledgment or proof to be exhibited to the judges, who are judicial, not to the clerk, who is a mere executive officer. The act of 1792 is silent whether the acknowledgment shall be certified to the clerk, or to the court; but as the laws existing at that time required it in other cases to be certified to the court, there is no reason to believe this act intended any alteration.

It is further to be remarked, that the conveyances made under the act of 1792, must be entirely by acknowledgment: the justices are not authorised to receive any proof, or to examine any witnesses.

It is very questionable whether under the act of 1795, the



clerks of the court of appeals, or district courts, could record any deeds where neither the acknowledgment nor proof was made before them, but was made in another county and certified to them: the several acts of assembly on this subject make use of the three terms *acknowledged*, *proved*, and *certified*, and they are each respectively applicable to a distinctly circumscribed class of cases; but the word *certified*, is not used in the acts of 1795.

On the 19th day of December 1796, the Kentucky *act to reduce into one the several acts or parts of acts for regulating conveyances*, passed (1 Litt. 565) and took effect from and after the first day of January following (1797). The first section of this act agrees literally with the act of 1785, except in the following particulars: *First*, The act of 1785 requires the deed to be acknowledged or proved, "before the court;" but this section of the act of 1796, requires it to be acknowledged or proved "in the office of the clerk." *Secondly*, Proof or acknowledgment before a city, or corporation court, might be made under the act of 1785, but no such courts are mentioned in the act of 1796. *Thirdly*, By the act of 1785, if some part of the land lay within the jurisdiction of a county, or other inferior court, the deed might be recorded in such court; but there is no similar provision in the first section of the act of 1796. *Fourthly*, The act of 1796 requires the acknowledgment or proof, to be made "*in the manner prescribed by law*," or, in the manner therein after directed: whereas the words "*in the manner prescribed by law*," are not contained in the act of 1785.

The second section agrees with the act of 1785, and differs from the first section in this, that it permits the deeds of which it treats, viz. covenants and agreements in consideration of marriage, to be recorded in the office of the clerk of the court of quarter sessions, or county court, of that county in which "*part of the land lieth*."

The third section differs from the act of 1785, in reducing the time within which a deed executed abroad, shall be offered to the proper court to be recorded, from eighteen to eight months. The phraseology of this section favors the opinion, that the clerk cannot adjudicate on the sufficiency of the authentication of a deed executed abroad, and record it, without the order of the court therefor.

The fourth section agrees with the act of 1785, except that in requiring the examination to be made by a member of the court, it substitutes the word "*justices*," instead of "*judges*."

The fifth section agrees literally with the act of 1785.

The 6th, 7th and 8th sections are a repetition of the act of 1792, respecting relinquishment of dower, and recording letters of attorney; which has been already noticed.

The ninth section agrees with the act of 1785, in requiring the clerk's docket to exhibit the date of the acknowledgment and probat, as well as the date of the deed.

Quarter session courts were established in June 1792, but it is believed that the present is the first act which gave permission to record deeds in the clerk's office of those courts. It continued to be legal so to do, until they were abolished in 1802.

On December 22d 1798, an act passed declaring that it should be lawful for the clerks of the county courts, and courts of quarter session, to receive the acknowledgment or proof of deeds out of court, in like manner as the clerk of the court of appeals, or district court clerks, were authorised to do by law (2 Litt. 262). It is uncertain when this act took effect. In 1802 deeds were permitted to be recorded in the clerks' offices of the circuit courts, and general court (3 Litt. 88-90); the clerks taking the acknowledgment or proof thereof in their offices: on which we may remark, that there is the same doubt whether any clerk, of any court, can record a deed certified from abroad, without an order of court therefor, as was intimated heretofore in respect to the clerk of the court of appeals.

In 1803 an act passed authorising the relinquishment of dower to be acknowledged before the county court clerk. If the meaning of the legislature was, that the county court clerk should privately examine the wife, and take her relinquishment, it is certainly very ill expressed. After a woman had been privately examined, before the judge or justice, and had relinquished her dower, she was required to *acknowledge* the same before the court, prior to its being ordered to be recorded. If this is the acknowledgment intended by the act of 1803, there seems to have been no necessity for it, as it is believed it might lawfully have been done under the act of 1798. But there is nothing in the expressions of the act, which authorises the clerk to enter into the private examination, and accept of the relinquishment. The acts of 1785 and 1796, make an evident distinction between the assent yielded by the wife, during her private examination, and the confirmation of that consent, by the public acknowledgment of the deed. The former is called (in effect) a *declaration*, and the latter an *acknowledgment*. But whatever may be

the meaning of the act in this particular, it is certain that it extends not to estates of inheritance ; but is confined to dower estate only : and that the clerks of *county courts*, are the only clerks authorised to receive such acknowledgments. In 1806, all acts authorising deeds or other instruments of writing, to be recorded in the offices of the circuit courts, were repealed. This act took effect from and after the first day of June 1807 (3 Litt. 358).

At the session of 1809, an act was passed "to amend the acts regulating conveyances of land" (Page 163 of this volume). This act authorises the recording of a deed on the testimony of two witnesses, and removes all doubt which might exist under the act of 1803, as to the clerks' authority to take the wife's relinquishment of dower, on private examination made by him.

At the same session in which the act of 1785 regulating conveyances was passed, the legislature passed an act to prevent frauds and perjuries : both took effect on the same day. The act to prevent frauds and perjuries, authorises the recording, and seems to render valid, deeds for personal property *only* on being proved by *two* witnesses : whereas the act regulating conveyances, and the fourth section of the act of 1748, require *three*. It is evident that if the same species of instruments were in the contemplation of the legislature, in both acts, there is a contradiction, or some thing very like one, between them. The Virginia statute against frauds and perjuries, was re-enacted *verbatim* at the same session in which our act respecting conveyances was passed, and took effect on the same day the latter act did.

As the adjudications of the court of appeals of Virginia, are read as authorities in this country, it may not be unacceptable to the reader to have some account of their revised acts regulating conveyances, passed since the separation.

The first section of the first act (passed December 13th 1792) agrees with the act of 1785 literally, except that district courts are added, after the general court, in directing where the deeds shall be recorded.

The second section agrees with the act of 1785, except the introduction of the district courts, where land is charged, and district, city, and corporation courts, where personal estate only is "settled or covenanted or agreed to be settled or paid."

The third section agrees *verbatim*, with the second section of the act of 1748.

The fourth section agrees *verbatim*, with the fourth section of the act of 1748.

The fifth section is as follows: "If the party who shall sign and seal any such writing, reside not in Virginia, *or in the district or county where the lands conveyed lie*, the acknowledgment by such party, or the proof by the number of witnesses requisite, of the sealing and delivering of the writing, before any court of law, or the mayor or other chief magistrate, of any city, town, or corporation, of the county in which the party shall dwell, certified by such court, or mayor or chief magistrate, in the manner such acts are usually authenticated by them, and offered to the proper court to be recorded within *eighteen months* after the sealing and delivering, where the party resides *out of this commonwealth*, and within *eight months* after the sealing and delivery, where the party resides *within this commonwealth*, shall be as effectual as if it had been in the last mentioned court."

The sixth section agrees *verbatim*, with the fourth section of our act of 1796.

The seventh section contains the whole of the fifth section of our act of 1796, and the whole of the seventh and eighth sections of the act of 1748.

The eighth section contains the whole of the ninth section of our act of 1796, *verbatim*.

In 1794, an act was passed "to amend the act for regulating conveyances." This act recites the fifth section of the act of 1792, (which see above) and then proceeds as follows: "And whereas the operation of said act is found not to be co-extensive with the intent thereof, by reason that some of the subdivisions of the United States, as well as of other countries, are not denominated by the term of counties: *Be it therefore enacted*, That if any person who shall sign and seal any such writing as is contemplated in the section aforesaid, reside not in Virginia, the acknowledgment by such party, or the proof by the number of witnesses requisite, of the sealing and delivering of the writing, before any court of law, or the mayor or other chief magistrate, of any city, town or corporation, of and in the *country* in which the party shall dwell, certified by such court, or mayor or chief magistrate, in the manner such acts are usually authenticated by them, and offered to the proper court to be recorded within *two years* after the sealing and delivering, shall be as effectual as if it had been done in the last mentioned court.

## APPENDIX N<sup>o</sup>. II.

### A REVIEW

OF THE

STATUTES AND ACTS OF ASSEMBLY

RELATING TO

### LAST WILLS & TESTAMENTS.

THE law respecting last wills and testaments, will, at no remote period, be extremely interesting to the citizens of this commonwealth; it is therefore thought adviseable to bring into one view the statutory provisions on the subject.

Prior to the first day of January 1787, the *positive* power or right of devising lands, depended on the following acts of parliament.

32 HENRY VIII. CHAP. I. A. D. 1540.

*“Be it enacted,* That all and every person and persons having, or which hereafter shall have, any manors, lands, tenements or hereditaments, holden in soccage, or of the nature of soccage tenure, and not having any manors, lands, tenements or hereditaments, holden of the king our sovereign lord by knight's service, by soccage tenure in chief, nor of any other person or persons, by knight's service, from the 20th day of July in the year of our Lord God 1540, shall have full and free liberty, power and authority, to give, dispose, will and devise, as well by his last will and testament in writing, or otherwise by any act or acts lawfully executed in his life, all of his said manors, lands, tenements or hereditaments, or any of them, at his free will and pleasure, any law statute heretofore had, made or used to the contrary notwithstanding.”

VOL. IV.

31

At the next session, which commenced in the 33d, and was continued by prorogation to the 35th of Henry VIII. in the year 1542-3, a long act was passed explanatory and amendatory of the former; which, among many other things not necessary to notice, provides that "where it is contained in the former statute, that all and singular person and persons having any manors, lands, tenements or hereditaments, of the estate of inheritance, should have full and free liberty, power and authority, to give, will, dispose or assign, as well by his last will and testament in writing, or otherwise by any act or acts lawfully executed in his life, his manors, lands, tenements or hereditaments, or any of them, in such manner and form as in the same former act more at large it doth appear, which words estate of inheritance by the authority of this present parliament is and shall be declared, expounded, taken and judged of estates in fee simple only.

"And also that all and singular person and persons having a sole estate or interest in fee simple, or seized in fee simple in coparcenary, or in common fee simple, of and in any manors, lands, tenements, rents, or other hereditaments, in possession, reversion or remainder, and having no manors, lands, tenements or hereditaments, holden of the king, his heirs or successors, or of any person or persons by knight's service, shall have full and free liberty, power and authority, to give, dispose, will or devise to any person or persons, (except bodies politic or corporate) by his last will and testament in writing, or otherwise by any act or acts lawfully executed in his life, by himself solely, or by himself and other jointly, severally or particularly, or by all those ways, or any of them, as much as in him of right is, or shall be, all his said manors, lands, tenements, rents and hereditaments, or any of them, or any rents commons or other commodities out of or to be perceived of the same, or out of any parcel thereof, at his own free will and pleasure, any clause in the said former act notwithstanding."

The next section provides for a partial devise of lands held of the king, and by knight's service. Infants under the age of twenty-one years and *femes covert*, are by the latter act excepted.

The last act may be considered as the really efficient one, and was the only law in Virginia or this country, by virtue of which devises of real estate could be made, prior to the second day of January 1787: the Virginia laws prior to that time having been merely negative and restrictive; that is,

declaring how devises *should not* be made, but giving no authority to make devises. The statute 29 of Charles II. commonly called the statute of frauds, was never in force in Virginia: that also is restrictive merely.

The earliest act of Virginia on the subject, which can have any direct operation on property in this state, is the act of 1748.

CHAP. 3, B. V. L. PAGE 159.

*An ACT directing the manner of granting Probats of Wills, and Administration of Intestates' Estates.*

I. *BE it enacted, by the lieutenant governour, council, and burgesses, of this present general assembly, and it is hereby enacted, by the authority of the same,* That the county courts of this dominion, and every of them, within their respective counties, have and shall have jurisdiction and authority to hear and determine all causes, matters, suits, and controversies testamentary, which shall be brought before them, and to examine and take the proofs of wills, and to hear and determine the right of administration of the estates of persons dying intestate, and to grant certificates thereof to the governour or commander in chief of this dominion for the time being, or to his deputy or deputies appointed for that purpose, being a member or members of the said courts respectively, for obtaining thereupon a probat or administration with the will annexed, or a commission of administration, as the case shall require, according to the methods and rules herein after directed, that is to say: If any person having a mansion-house, Or other place of known residence and abode, Within this dominion, Shall depart this life, and dispose of his or her estate, or any part thereof, by will,

Such will shall be proved in the court of that county where such mansion-house or place of residence shall be;

And if any person having no mansion-house, or place of residence, within this colony,

Shall devise lands therein by will, in writing, such will shall be proved in the court of that county wherein such lands shall lie;

And if such lands lie in several counties,

And the testator dies in any one of them,

His will shall be proved in that county where he died;

And if he dies in some other county,

Then in the court of one of the counties wherein such devised lands shall lie,

And not in any other county ;

And every such will so proved as aforesaid shall be as effectual for the disposing of lands, or any other estate, as if the same had been proved in every county where any of the lands or estate shall be.

II. And where any person shall depart this life, having first made a will, and therein appointed his executor or executors, and they shall all of them refuse the executorship, in such case the same court wherein the will should have been proved, if the executors had accepted the trust, shall have power and authority to hear and determine the right of administration, and to grant certificate for obtaining letters of administration with the will annexed.

III. When any will shall be exhibited to be proved in the general court, or in any county court, such court may proceed immediately to receive the proof thereof, and appoint appraisers to value the slaves and personal estate of the testator.

IV. But where by any will the lands of the testator, or any part thereof, shall be devised away from the heir or heirs at law, such proof, as to him, her, or them, shall not be binding ; but the court shall cause such heir or heirs to be summoned to appear at the next court, and to contest the validity of such will, if he, she, or they, think fit ; and if there be several heirs, in equal degree to the testator, every such heir shall be so summoned ; and if no heir be known to the court, or to the executors, who shall declare the same upon oath, before such court, then proclamation of such will, being exhibited and proved, shall be made by the sheriff at the courthouse, on two successive court days, and he shall also publish notice thereof in writing, affixed at the door of every church in his county : and all persons concerned in interest, who at the time of proving any will shall be under the age of one and twenty years, *feme covert*, *non compos mentis*, imprisoned, or out of this colony, shall have liberty to contest the proof thereof within ten years after their several disabilities and incapacities removed, and not afterwards.

V. And if any person having a mansion-house, or other known place of residence, within this dominion, shall die intestate, the court of that county wherein such mansion-house or place of residence is shall hear and determine the right of administration of the estate of such intestate, and grant certificate thereof in manner aforesaid.



VI. Where the intestate had no mansion-house, or known place of abode in this colony, certificate for obtaining administration shall be granted by the court of the county wherein he died. If an executor or administrator dies intestate, not having fully administered the estate of his testator or intestate, the same court by whom certificate for probat or administration was granted to such executor or administrator shall determine the right of administration of the estate not administered, and grant certificate thereof.

VII. *And be it further enacted, by the authority aforesaid,* That all devises and bequests of any lands or tenements shall be in writing, and signed by the party devising the same, or by some other person in his presence, and by his express direction, and shall be attested and subscribed in the presence of the said devisor by two or more credible witnesses, or shall be wholly writ by the said devisor's own hand, or else they shall be void and of no effect.

VIII. And that no devise, in writing, of lands, tenements, or hereditaments, or any clause thereof, shall at any time afterwards be revocable, otherwise than by some other will, or codicil, in writing, or other writing, declaring the same, or by burning, cancelling, tearing, or obliterating the same, by the testator himself, or in his presence, and by his directions and consent; but all devises and bequests of lands or tenements shall remain and continue in force until the same be burnt, cancelled, torn, or obliterated, by the testator himself, or by his directions in manner aforesaid, or unless the same be altered by some other will, or codicil, in writing, or other writing of the devisor, signed in the presence of two or more witnesses, declaring the same; any law, or usage, to the contrary notwithstanding.

IX. And for prevention of fraudulent practices, by setting up nuncupative wills, *be it further enacted, by the authority aforesaid,* that no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of ten pounds current money, that is not proved by the oaths of two or more witnesses present at the making thereof; or unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days, or more, next before the making of such will, except

where such person was surprised or taken sick, being from his or her own home, and died before he or she returned to the place of his dwelling.

X. *And be it further enacted, by the authority aforesaid,* That after six months passed, after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony, or the substance thereof, were committed to writing, within six days after the making such will.

XI. And that no certificate for granting probat of any nuncupative will, or for administration of the estate by such will given or bequeathed, shall be granted by any court till fourteen days at the least after the decease of the testator shall be expired; nor shall any nuncupative will, at any time, be admitted to be proved unless summons have first issued to call in the widow, or next of kindred to the deceased, to the end they may contest the same if they please.

XII. *And be it further enacted, by the authority aforesaid,* That no will in writing, concerning any goods, chattels, or personal estate, shall be repealed; nor shall any clause, devise, or bequest therein, be altered or changed, by any words, or will, by word of mouth only, except the same be in the life of the testator committed to writing, and after the writing thereof read unto the testator, and allowed by him, and proved to be so done by two or more witnesses.

XIII. *Provided always,* That any soldier being in actual military service, or any mariner or seaman, being at sea, may dispose of his moveables, wages, and personal estate, as he or they might have done before the making of this act.

XIV. *And be it further enacted, by the authority aforesaid,* That administration of the estate of every person dying intestate, and administration with the will annexed of the estate of every testator, whose executor, or executors, shall refuse to prove and execute his will, shall be granted in manner following, that is to say: First, to the husband or wife of the deceased; and if none such, or if they refuse, then, secondly, to the child or children, or their legal representatives; and if none such appear or claim, then, thirdly, to the father or mother; or if none such, then, fourthly, to the brothers and sisters; and if none such, then to the next of kindred to the deceased person. And if no will shall be exhibited, or administration sued forth, before or at the next court held after expiration of thirty days from any person's death, the court may grant administration to any creditor or credi-

tors of the deceased suing for the same, or to any other person the court in their discretion shall think fit.

XV. *Provided always*, That where it shall appear to the court, either of their own knowledge or upon application to them made by creditors or legatees, that any estate is likely to be wasted or embezzled, such court may and are hereby authorised and required to proceed immediately to grant certificate for obtaining administration thereof.

XVI. *Provided also*, That if any will shall be afterwards exhibited to be proved, or any of the deceased person's kindred, not having before refused, shall appear and pray certificate for obtaining probat or administration, the same shall be granted in like manner as if no former administration had been granted or obtained. Nor shall any thing herein before mentioned be construed to disable any court from summoning any person or persons whatsoever, having the will of a person deceased in his, her, or their custody or possession, to exhibit the same to the court, in order to a legal probation thereof; but the court may compel such person or persons, by summons, or other lawful process, as they shall think fit, to produce such will, that the just and legal proceedings may be had thereupon.

XVII. *And be it further enacted, by the authority aforesaid*, That before granting certificate for probat or administration, to any person or persons whatsoever, he, she, or they, shall personally, in open court, take one of the following oaths, as the case shall require, to wit:

*The oath of an executor, or administrator, with the will annexed.*

You shall swear that this writing contains the true last will of the within named A. B. deceased, as far as you know or believe, and that you will well and truly perform the same, by paying, first, his debts, and then the legacies contained in the said will, as far as his goods, chattels, and credits, will thereunto extend, and the law charge you; and that you will make a true and perfect inventory of all the said goods, chattels, and credits. So help you God.

*The oath of an administrator.*

You shall swear that A. B. deceased died without any will, as far as you know or believe, and that you will well and truly administer all and singular the goods, chattels, and credits, of the said deceased, and pay his debts, as far as his goods, chattels, and credits, will thereunto extend, and the law require you; and that you will make a true and perfect inven-

tory of all the said goods, chattels, and credits, as also a just account, when thereunto required. So help you God.

And shall also give bond, in a sufficient sum, proportionable to the full value of the estate, at the least, and with such sufficient security of persons residing in the same, or any other county, as by the court shall be approved of, and with one of the conditions following, to wit :

*Condition of the bond to be given by executors, or administrators with the will annexed.*

The condition of this obligation is that if the above bound A. B. executor of the last will and testament of C. D. deceased (or administrator with the will annexed of all the goods, chattels, and credits, of C. D. deceased) do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits, of the said deceased, which have or shall come to the hands, possession, or knowledge, of him the said A. B. or into the hands or possession of any other person or persons for him, and the same so made do exhibit, or cause to be exhibited, into the county court of N. at such time as he shall be thereto required by the said court, and the same goods, chattels, and credits, and all other the goods, chattels, and credits, of the said deceased, at the time of his death, which at any time after shall come to the hands or possession of the said A. B. or into the hands or possession of any other person or persons for him, do well and truly administer, according to law, and further, do make a just and true account of his actings and doings therein, when thereto required by the said court, and also do well and truly pay and deliver all the legacies contained and specified in the said testament, as far as the said goods, chattels, and credits, will thereunto extend, according to the value thereof, and as the law shall charge him, then this obligation to be void, otherwise to remain in full force and virtue.

*Condition of an administration bond.*

That if the above bound A. B. administrator of all the goods, chattels, and credits, of C. D. deceased, do make, &c. [as before, unto the words when thereto required by the said court] and all the rest and residue of the said goods, chattels, and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed by the justices of the said court for the time being, shall deliver and pay unto such person or persons respectively as the said justices, by their order or judgment, shall direct, pursuant to the laws in that case made and provided, and if it

shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same in the said court, making request to have it allowed and approved accordingly, if the said A. B. being thereto required, do render and deliver up his letters of administration, approbation of such testament being first had and made in the said court, then this obligation to be void, &c.

Which bond shall be payable to the justices of the court sitting at the time the same shall be entered into and taken, and their successors, and shall not become void upon the first recovery, but may be put in suit, and prosecuted, from time to time, by and at the costs and charges in the law of any party or parties injured, until the whole sum of the penalty expressed in such bond shall be recovered thereon.

XVIII. *And be it further enacted, by the authority aforesaid,* That if any court shall grant certificate for obtaining administration of the estate of any person deceased, without taking good security for the same, as by this act required, the justices granting such certificate, and every of them, shall be answerable for all loss and damage accruing for want of such security, recoverable by action at the common law, by any person or persons injured.

XIX. *Provided nevertheless,* That if the securities taken by the court were good at the time of their being so accepted and taken, but afterwards become insolvent, in such case the justices shall not be answerable; and that where any person shall be security for any decedent's estate, or for the estate of any orphan, and shall conceive himself in danger by reason thereof, and petition the court for relief, it shall be lawful for the said court to summon the party with and for whom the petitioner stands bound, and to make such order or decree thereupon as to them shall seem just and equitable, for relief and indemnifying of such petitioner, by counter security, or otherwise.

XX. *Provided also,* That where any testator shall leave visible estate, more than sufficient to pay all his debts, and by his will shall direct that his executor or executors shall not be obliged to give security, in such case no security shall be required of him, her, or them; but where the court shall see cause, either upon their own knowledge or the suggestions of creditors or legatees, to suspect any executor or executors of fraud, or that the testator's personal estate will not be sufficient to discharge all his debts, in such or the like cases the

court may, if they think fit, require such executor or executors to give security, notwithstanding their testator's directions to the contrary: and if he, she, or they, shall refuse or fail to give security, when ruled thereto by the court, such refusal or failure shall amount to a refusal of the executorship, and administration with the will annexed shall be committed in the manner by this act before directed.

XXI. *Provided also*, that nothing herein before contained shall be construed to abridge or restrain the power of executors over their testators' estates, until probat of the will, or administration with the will annexed, be obtained or granted; but they may possess themselves thereof, and till then execute their trust, as fully and amply as if this act had never been made.

XXII. *And be it further enacted, by the authority aforesaid*, That all probats of wills, commissions of administration, or of administration with the will annexed, issued upon certificates granted according to this act, and signed by the governor, or commander in chief of this dominion for the time being, with the public seal of this colony affixed thereto, or signed by such other person or persons, being one or more of the magistrates in commission of the peace, as shall be there-to authorised by the said governor or commander in chief, and sealed with the seal of the court granting certificate (which seal every county court is hereby empowered to provide, at the charge of their county) shall be, and are hereby declared to be, good and effectual in law to empower and enable the executors and administrators therein named, and every of them, to possess themselves of the estates of their testators or intestates, by any lawful ways or means whatsoever.

XXIII. And to the end the value of estates may be the better known, and a just account thereof kept:

XXIV. *Be it further enacted, by the authority aforesaid*, That all executors and administrators shall exhibit a true and perfect inventory of all the estate to him, her, or them, committed, to the court granting the probat or administration.

XXV. And that every court granting probat or administration shall then also appoint and nominate three or more appraisers in every county where any of the testator's or intestate's slaves, goods, or chattels, shall be; who, being sworn before any one justice of their county truly and justly to value the estate to them produced, to the best of their judgment, shall accordingly appraise the same, and return such appraisement, under their hands, to the court ordering the

same. And every appraiser shall be paid thirty pounds of tobacco per day for his trouble and attendance, to be defrayed by the estate, and allowed to the executor or administrator upon passing his account; and such appraisement may be given in evidence, in any action or suit brought against the executor or administrator, to prove the value of the estate, but shall not be binding, either upon the executor, administrator, creditor, or other person whatsoever, where it shall appear, by any other legal proof, that the slaves, goods, or chattels, were really worth, or *bona fide* sold for more or less than the appraisement.

XXVI. *And be it further enacted, by the authority aforesaid,* That all executors and administrators, as soon as conveniently the same may be done, after the debts of their testator or intestate shall be fully satisfied and paid, shall sell and dispose of all such goods and chattels of their testator or intestate, specific legacies excepted, as are or may be liable to perish, consume, or be the worse for using or keeping, for the most that can be got for the same, in money, by public sale or auction; and shall and may, for the enhancing the price thereof, give credit, upon good security, for what time such executor or administrator shall think fit, having regard to the circumstances of the estate, and the time when the legacies will become due, or distribution of such estate is to be made. And when such goods and chattels shall be so *bona fide* sold, the executor or administrator shall be answerable for the value of such sale, and no more. And in case any executor or administrator shall sell goods of his testator or intestate, to be paid for at a future day, the buyer shall enter into bond to such executor or administrator, with one or more sureties, or shall give some other sufficient security, for payment of the money accordingly; and the executor or administrator, after the time of such payment is past, shall take and pursue all lawful ways and means to recover and receive the money, upon pain of being answerable for the same himself. And if the same shall not be received before the legatees, or other persons entitled to a distribution thereof, shall have right to demand the same, it shall be lawful for the executor or administrator to assign such bond, or other security, to such legatee or other person as aforesaid; and such assignment shall discharge such executor or administrator, for so much, against him or them.

XXVII. *Provided nevertheless,* That if after such assignment the obligor or obligors in such bond become insolvent,

go as the money for which such bond or other security was given be lost, such loss shall be made good to the assignee out of the estate of such testator or intestate.

XXVIII. *Provided also*, That where any testator shall direct that his estate shall not be appraised, or shall be preserved in specie, and not sold, and shall leave personal estate more than sufficient to pay all his debts, nothing in this act shall extend, or be construed, to control such last will, but the same shall and may be pursued and fulfilled: and the returning an inventory of the estate of such testator, without appraisement, shall be sufficient.

XXIX. *Provided also*, That no executor or administrator hath, or shall have, any power to sell or dispose of any slave or slaves of his testator or intestate, except for the paying and satisfying the just debts of such testator or intestate, and then only where there is not sufficient other personal estate to satisfy and pay such debts; and in that case it shall be lawful for the executor or administrator to sell, at public auction, such or so many slave or slaves as shall be sufficient to raise so much money as the personal estate falls short of the payment of the debts.

XXX. *And be it further enacted, by the authority aforesaid*, That where any person shall die between the first day of March and the twenty-fifth day of December, the servants and slaves which such person was possessed of at the time of his or her death shall be continued and employed upon the plantation and plantations held and occupied by the deceased person, until the twenty-fifth day of December then next following, for the making and finishing a crop of tobacco, corn, or other grain; which crop, so made and finished, shall be assets in the hands of the executors or administrators, after the charges of clothing and feeding such servants and slaves, and the expense of tools and utensils for them to work with, and also the quitrents of the land whereon they work, levies, and other incident charges, shall be deducted.

XXXI. And after the said twenty-fifth day of December all the servants and slaves of such deceased person shall be delivered up, to the party or parties having legal right to demand the same; and all such of the said servants or slaves as shall then be of the age of ten years or more shall be delivered, well clothed, at the charge of such decedent's estate.

XXXII. *Provided always*, That no executor or administrator shall be answerable for any servant or slave dying before the said twenty-fifth day of December, although such servant or slave be inventoried or appraised.



XXXIII. And for the better preservation of wills, *be it further enacted, by the authority aforesaid*, that all original wills shall remain in the clerk's office, among the records of the respective counties where they shall be proved, whereto any person may have recourse, as to other records, except for the time the same shall be removed by direction of the general court, and that to every probat shall be annexed a true copy of the will whereupon such probat was granted.

XXXIV. And forasmuch as the preserving of neat cattle, and their increase, may be of great advantage to orphans, for the improving their lands: *Be it further enacted, by the authority aforesaid*, that where any person dying intestate shall leave sufficient to satisfy his debts, besides slaves and neat cattle, the heir at law being under age, such cattle shall be kept upon the lands and plantation of such heir until he shall come of age, and he shall have the benefit of their increase, and bear all loss, if any shall happen.

XXXV. *Provided nevertheless*, That the administrator of such estate, or guardian of such orphan, in case such stock grow too numerous, or if it will be to the advantage of such orphan, shall and may sell such part of said stock as he shall think fit; and also that such heir at law shall satisfy and pay unto the other children, or such other persons as shall be entitled to a distribution of such intestate's estate, his, her, or their, proportionable part or parts of the value of such stocks of cattle as shall be left at the time of the death of such intestate.

XXXVI. *And be it further enacted, by the authority aforesaid*, That all and every the executors and administrators of any person or persons who, as executor or executors, in his or their own wrong, and the executor or executors, administrator or administrators, of any executor or administrator of right, who shall waste, or convert to his own use, goods, chattels, or estate, of his testator or intestate, shall be liable and chargeable in the same manner as his or their testator or intestate should or might have been.

XXXVII. And that actions of account shall and may be brought and maintained against the executors or administrators of every guardian, bailiff, and receiver, and also by one joint tenant, or tenant in common, his executors or administrators, against the other, as bailiff, for receiving more than comes to his just share or proportion, and against the executor or administrator of such joint tenant, or tenant in common.

XXXVIII. And that all executors and administrators shall be allowed in their accounts all reasonable charges and disbursements which they shall lay out and expend for selling any estate, and receiving the money upon such sale, pursuant to this act; and also for collecting and receiving the outstanding debts of their testator or intestate, and no other allowance whatsoever.

XXXIX. *And be it further enacted, by the authority aforesaid,* That the clerk of every county court shall, in the months of April and October, annually, return to the secretary's office a list of all certificates for obtaining probat or administration, granted by their respective courts, from time to time, containing the names of the testators or intestates, their executors or administrators, and the names of the securities; which lists the secretary of this colony is hereby required to cause to be recorded in his office, alphabetically, in books for that purpose.

XL. *And be it further enacted, by the authority aforesaid,* That where any testator or intestate shall leave estate, real or personal, of the value of one hundred pounds current money, or more, it shall and may be lawful for the general court of this dominion, upon motion to them made, to receive the proof of such testator's will to them exhibited, and to hear and determine the right of administration of the estate of such intestate, and thereupon to grant certificate for obtaining probat or administration, or administration with the will annexed, as the case shall require, in the same manner, and with the same rules and limitations, as by this act is before directed to be observed in the county courts. And that all probats, and commissions of administration, granted upon certificates obtained in the general court, shall be issued under the seal of this colony, and signed by the governour or commander in chief of this dominion for the time being, or by the president of the council for the time being, or by such judge or judges of the said court as shall be for that purpose authorised by commission of the said governour or commander in chief, which shall be good and effectual in law to enable the executors or administrators therein named to recover and take the estate of their testator or intestate so to them committed.

XLI. And that the forms of all oaths and bonds, by this act required of executors and administrators, shall be the same in the general court as in the county courts.

*XLII. Provided always*, That where the general court shall grant certificate for obtaining the administration of any estate, and shall fail to take sufficient security for the same, in such case the members of the said court granting such certificate, and every of them, shall be liable to pay all loss and damages accruing by such failure, in the same manner as the justices of the county court, in the like case, should have been.

*XLIII. And be it further enacted, by the authority aforesaid*, That all and every other act and acts, clause and clauses, heretofore made, for or concerning any matter or thing within the purview of this act, shall be and are hereby repealed.

*XLIV. And be it further enacted, by the authority aforesaid*, That this act shall commence and be in force from and immediately after the tenth day of June, which shall be in the year of our Lord one thousand seven hundred and fifty-one.

As this continued to be law, until the second day of January 1787; as many persons made wills, in this country prior to that period, and more made wills abroad devising lands lying in this country; it was deemed advisable to present it entire. On the second day of January 1787, the act of 1785, agreeing substantially with our act of 1797, took effect: and of course repealed as much of the act of 1748 as was repugnant thereto: on the second day of March 1797, our act of 1797 took effect, and repealed as much of both the former acts as was contrary thereto. This being premised, I shall proceed to examine the provisions of the respective acts.

The 7th section of the act of 1748, declaring what shall be a valid devise of lands, is precisely in the words of the correlative section of the English statute of frauds, except that,

*First*—After the word “tenements” in the statute of frauds follows, “devisable either by force of the statute of wills, or by force of the custom of rent, or the custom of any borough, or other particular custom.”

*Secondly*—The English statute requires “three or four credible witnesses,” whereas the Virginia statute requires only two.

*Thirdly*—These words in the Virginia act, “or shall be wholly writ by the devisor’s own hand,” are not in the English statute, nor does it contain any expression of that kind.

The correlative sections of the acts of 1785 and 1797 (which in this are *verbatim* the same) differ from the act of 1748, in the following particulars: *First*, After the word

"tenements," in the act of 1748, the other acts have the following words: "or hereditaments or annuities or rents charged upon or issuing out of them."

*Secondly*—The word "express," before the word "directions," is not contained in the acts of 1735 and 1797.

*Thirdly*—The word "competent," is substituted in place of "credible," by both the later acts.

*Fourthly*—The later acts omit that part of the act of 1748, declaring devises otherwise made, "void and of no effect," but introduce the requisites by way of condition precedent."

*Fifthly*—The act of 1748 seems to require only the clauses devising real estate, to have been written by the testator; and although the other parts of the will were written by another hand, and no proof made by witnesses, other than of the hand writing of the devisor, it appears as if such devise would be good: whereas the later acts require, the "last will and testament" devising real estate, if not wholly written by the testator, to be proved by two witnesses.

As to the probat of a will, I believe the term embraces a proving the will to be the hand writing of the testator, where there are no subscribing witnesses, as well as proving it in the usual way where there are: and we may observe, that no act of assembly fixes any limitation of time, beyond which, a will may not be proved in court: and although we may infer that when a will has been once duly proved, it generally becomes intraversable, and after a certain period becomes so in every case, yet we are nowhere informed what will be the legal result of failing to make probat, of a will devising real estate. Proof of a will devising goods and chattels only, seems necessary under our statute of frauds. Suppose the devisee should, without having the will proved, take possession of the land devised, and the heir at law should bring an ejectment; could the devisee justify the original entry under an unproved will? And could he, without having it regularly proved, and admitted to record in the proper court, prove on the trial, its due execution, and thereupon hold the devised lands by virtue of an unrecorded will?

By the act of 1748, it appears, that the governor or commander in chief was the proper person from whom to obtain probat of a will, or letters of administration, but that this authority was generally delegated to his deputy in each county. His deputy was always one of the justices of the county court. The jurisdiction of the county court appears to have been examining and taking proofs of wills, and hear-

ing and determining the right of administration:" and having done this they certified it to the governor or his deputy, who thereupon granted probat, or administration with the will annexed, or a commission of administration, as the case required.

Where the testator left estate, real or personal, of the value of one hundred pounds current money, the general court had, under the act of 1748, concurrent jurisdiction with the county courts: in all other cases the county courts had exclusive jurisdiction. In this the act of 1785 differs materially from the act of 1748; as the latter act gave the general court concurrent jurisdiction in all cases whatever: and our act of 1797 differs from both, in giving our general court no jurisdiction in any case.

The general court, where the estate amounted to one hundred pounds, had, under the act of 1748, jurisdiction, without any reference to the place where the will was made, or where the testator died.

But as application must be made to the county courts in many cases, and might be made in all, it was necessary to establish some criterion by which the jurisdiction of the county court might be determined, in every case. In establishing this criterion, no attention is paid to the place where the will was written or published. The county where the testator resided at the time of his death, had the preference, where he had a settled place of residence. If he had no such place of residence, but had land, and devised it, and died in another county, the county in which his land lay had jurisdiction, in preference to the county in which he died; but if he had lands in several counties, and died in any one of them, the county in which he died, had the preference. If, having lands in several counties, he should die in a county in which he had no land, it was in the election of his executors, or those interested, to have the will proved in any one of the counties in which he had land.

It is remarkable that this act makes no provision for the following occurrences, which it is supposed could not be unusual, at that time or any other: Suppose a man having an estate in lands in Virginia, but no known place of residence in it, should have made his will there and then gone out of the colony and died; it does not appear that any court would have jurisdiction in such case: for a known place of residence, or dying, *within the colony*, seems essential to give jurisdiction to any court, under this act. Suppose a man to have had an

estate in lands in Virginia, but to have been himself a subject and resident of some of the adjoining colonies, and there to have made his will and died; this act provides no means by which such will could be proved in Virginia: nor does it furnish any substitute for the production and proof of the original will. Again, suppose a man to have had no place of residence, nor lands in Virginia, but to have had an estate in an adjoining colony or elsewhere, and being in Virginia, to have made his will and died; this act makes no provision for its probat.

The act establishing a supreme court for the district of Kentucky, passed in 1782, contains the following clause: "The said court shall be a court of record, and shall at any time during the term, take cognizance of matters arising within the district, respecting the probat of deeds and wills, and granting letters of administration."—Chan. Rev. p. 168.

In the year 1785, the legislature of Virginia passed an act entitled "*an act concerning wills, the distribution of intestates' estates,*" &c. This act took effect from and after the first day of January 1787, and continued in force in this country, until the second day of March 1797. As much as is to our present purpose, is contained in the following sections.

Sec. I. *Be it enacted by the general assembly,* That every person aged twenty one years or upwards, being of sound mind, and not a married woman, shall have power at his will and pleasure, by last will and testament in writing, to devise all the estate, right, title, and interest, in possession, reversion, or remainder, which he hath, or at the time of his death shall have, of, in, or to lands, tenements, or hereditaments, or annuities, or rents charged upon issuing out of them; so as such last will and testament be signed by the testator, or by some other person in his presence, and by his direction; and moreover, if not wholly written by himself, be attested by two or more credible witnesses subscribing their names in his presence.

Sec. II. Saving to the widows of testators, their dower in such lands, tenements, rents, or annuities, according to the laws, which shall not be prejudiced by any devise thereof.

Sec. III. No devise so made, or any clause thereof, shall be revocable but by the testator's destroying, cancelling, or obliterating the same, or causing it to be done in his presence, or by a subsequent will, codicil, or declaration in writing, made as aforesaid. But every last will and testament, made when the testator had no child living, wherein any child be

might have is not provided for, or mentioned, if at the time of his death he leave a child, or leave his wife enseint of a child, which shall be born, shall have no effect during the life of such after born child, and shall be void unless the child die without having been married, or before he or she shall have attained the age of twenty-one years. When a testator shall leave children born, and his wife enseint, the posthumous child or children, if neither be unprovided for by settlement, and be neither provided for nor disinherited, but only pretermitted by the last will and testament, shall succeed to the same portion of the father's estate, as such child would have been entitled to, if the father had died intestate; towards raising which portion, the devisees and legatees shall contribute proportionably out of the parts devised and bequeathed to them by the same will and testament.

Sec. IV. No person under the age of eighteen years shall be capable of disposing of his chattels by will.

Sec. V. No nuncupative will, shall be established unless it be made in the time of the last sickness of the deceased, at his habitation, or where he hath resided for ten days next preceding, except where the deceased is taken sick from home and dies before he returns to such habitation; nor where the value exceeds ten pounds, unless it be proved by two witnesses that the testator called on some person present to take notice or bear testimony that such is his will, or words of the like import.

Sec. VI. After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony, or the substance thereof, shall have been committed to writing within six days after making the will.

Sec. VII. No will in writing or any devise therein of chattels, shall be revoked by a subsequent will, codicil, or declaration, unless the same be in writing.

Sec. VIII. Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels as he might heretofore have done.

Sec. IX. If any person shall subscribe his name as a witness to a will wherein any bequest is given to him, if the will may be not otherwise proved, the bequest shall be void, and such witness shall be allowed and compellable to appear and give testimony on the residue of the will, in like manner as if no such bequest had been made. But if such witness would be entitled to any share of the testator's estate in case the

will were not established, so much of his said shares shall be saved to him as shall not exceed the value of the legacy bequeathed him.

Sec. X. The several county, city, or corporation courts, shall have power to hear and determine all causes, matters, suits, and controversies, testamentary, arising within their respective jurisdictions, and to examine and take the proof of wills, and grant certificates thereof according to the methods and rules following, that is to say: If any testator shall have a mansion-house or known place of residence, his will shall be proved in the court of the county, city, or corporation wherein such mansion-house or place of residence is: if he hath no such place of residence, and lands be devised in the will, it shall be proved in the court of the county, city, or corporation wherein the lands lie, or in one of them where there shall be lands in several counties: and if he hath no such known place of residence, and there be no lands devised, then the will may be proved either in the court of the county, city, or corporation where the testator shall die, or that wherein his estate, or the greater part thereof, shall be, or such will may in any case be proved in the general court.

Sec. XI. When any will shall be exhibited to be proved, the court having jurisdiction as aforesaid, may proceed immediately to receive the proof thereof, and grant a certificate of such probat: if however, any person interested, shall within seven years afterwards appear, and by his bill in chancery contest the validity of the will, an issue shall be made up, whether the writing produced be the will of the testator or not, which shall be tried by a jury, whose verdict shall be final between the parties; saving to the court a power of granting a new trial for good cause, as in other trials; but no such party appearing within that time, the probat shall be forever binding.

Sec. XII. In all such trials by jury, the certificate of the oath of the witnesses, at the time of the first probat, shall be admitted as evidence, to have such weight as the jury shall think it deserves.

Sec. XIII. No nuncupative will shall be proved within fourteen days after the death of the testator, nor until his widow (if any) and next of kin have been summoned to contest the same if they please.

Sec. XIV. If the general court, or any county, city, or corporation court, having jurisdiction as aforesaid, shall be informed that any person hath the will of a testator in his cus-



today, such court may summon such person, and by a proper process compel him to produce the same.

The act of 1785 differs from the act of 1748, as to the courts in which wills may be proved, in the following particulars: *First*, The act of 1785 gives city and corporation courts jurisdiction concurrent with the county courts; whereas no such courts are mentioned in the act of 1748. *Secondly*, Where a man had land in several counties, and died in any one of them, the act of 1748 gave the jurisdiction to that county in which he died: the act of 1785 gives no such preference, but permits the will to be proved in any one of the counties in which the land lies. *Thirdly*, The act of 1748 makes no provision for recording the will of a man who had neither mansion-house, place of residence, or lands, in the colony: the act of 1785 does, and gives the jurisdiction to the county where he died, or where his estate, or the greater part thereof, shall be. *Fourthly*, The act of 1785 gives the general court concurrent jurisdiction with the county and inferior courts, without any respect to the value of the estate.

Neither the act of 1748 or 1785, made any provision for the probat of wills in either of the following cases: *First*, Where a man living abroad, and there executing his will and dying, should by such will, devise lands lying in Virginia. *Secondly*, Where a citizen of Virginia should casually go out of the state, and there make his will and die. In both these cases it is probable that the will might be proved, under the provisions of the act of 1785, by producing the attesting witnesses from such foreign country, or proving the hand writing of the testator in court; but a will could not be sent abroad for proof, nor could a copy from the record in a foreign country, be admitted in place of the original. To remedy these inconveniences, was the object of an act passed January 2d 1788, which is as follows:

ACTS OF 1787, CHAP. XXI, PAGE 19.

*An ACT prescribing the method of proving certain Wills.*

Passed the 2d of January 1788.

Sec. I. WHEREAS it frequently happens that the wills of persons dying possessed of property within this commonwealth, are attested by persons who reside out of the jurisdiction of the courts thereof, so that they cannot be compelled by any legal process to attend for the purpose of proving such wills:

*Sec. II. Be it therefore enacted by the general assembly,* That it shall be lawful for the general court, or the supreme court of the district of Kentucky, when any will shall be produced to them for probat, and any witness or witnesses attesting the same, shall reside out of the jurisdiction of the said courts respectively, to issue a commission or commissions annexed to such will, and directed to the presiding judge of any court of law, to any notary public, mayor, or other chief magistrate of any city, town, corporation, or county where such witness or witnesses may be found, empowering him to take and certify their attestations. If the person to whom any such commission shall be directed, shall certify in the manner such acts are usually authenticated by him, that the witness or witnesses personally appeared before him, and made oath, or affirmed, as the case may require, that the testator signed and published the writing annexed to such commission, as his last will and testament, or that some other person signed it by his direction, that he was of disposing mind and memory, and that he or they subscribed their names thereto in his presence, and at his request, such oath or affirmation shall have the same operation, and the will be recorded in like manner, as if such oath or affirmation had been made in the court from whence such commission issued.

*Sec. III. And be it further enacted,* That it shall be lawful for any county court, when any will shall be produced to them for probat, and any witness or witnesses attesting the same shall reside out of the limits of this commonwealth, or out of the jurisdiction of the supreme court of that part of the country in which such county may be, to issue commissions in the manner before directed; and upon the return thereof, with the attestations before mentioned duly authenticated, such wills shall be recorded in like manner as if such commissions had issued from the general court, or the supreme court of the district of Kentucky. And whereas the wills of sundry persons dying in the district of Kentucky, have been proved and recorded in the general court, and in the courts of counties not within the said district, and the said wills cannot now be removed to the county where any such person may have died:

*Sec. IV. Be it therefore enacted by the general assembly,* That it shall be lawful for the court of any county within the said district of Kentucky, in which any person died whose will has been recorded in the general court, or in the court of any county not within the said district, to qualify the executors,

to grant certificates for obtaining letters of administration, upon an attested copy being produced to them of any such will, with a certificate that the same has been duly proved and recorded in any such court. And whereas the intercourse between this state and the other states in the union, and between this state and foreign nations, has become more considerable than heretofore, which renders it necessary that some mode should be adopted, to give authenticity to wills of persons dying within any of the United States of America, or in any foreign kingdom, state, nation, island, or colony beyond sea, and out of the jurisdiction of this state, having lands, goods, chattels, debts, or demands within this state, as well as to policies of insurance, charter parties, powers of attorney, or other agreements in writing, foreign judgments, and specialties on record, registers of births, marriages, made, executed, entered into, given, and enregistered, by and between persons residing in any of the United States, or in any foreign kingdom, state, nation, or colony beyond sea, and out of the jurisdiction of this state:

*Sec. V. Be it enacted*, That copies of wills of such persons made, or hereafter to be made, and duly proved according to the laws of such other state in the union, kingdom, nation, island, or colony beyond sea, or of any place or places out of the jurisdiction of this state, where the testator shall have died, attested by the bishop, register, commissary, clerk, or other officer to whose custody such will, shall by the laws of such state, kingdom, nation, island, or colony, have been committed; to which copy shall be affixed a testimonial, and the seal of the city, county, corporation, or borough where such office is held, or of a notary public residing in such city, county, corporation, or borough, or of the great seal of such state, kingdom, nation, province, island, or colony beyond sea, and out of the jurisdiction of this state, shall be admitted to record in the general court, in the same manner as if the original will or wills had been proved in open court by the witnesses thereto, and copies of the same certified by the clerk of the said court, shall be admitted in evidence in all courts within this state, as if the original will or wills had been proved in the said court.

*Sec. VI. And be it further enacted*, That all policies of insurance, charter parties, powers of attorney, foreign judgments, specialties on record, registers of birth, and marriages, which have been made, executed, entered into, given, and enregistered in due form according to the laws of such

state, kingdom, nation, province, island, or colony, and attested by a notary public, with a testimonial from the proper officer of the city, county, corporation, or borough where such notary public shall reside, or the great seal of such state, kingdom, province, island, colony, or place beyond sea, shall be evidence in all the courts of record within this commonwealth.

Sec. VII. *And be it further enacted*, That all persons named as executors in any such will, shall after the copy thereof has been admitted to record as above directed, be entitled to a probat of the said will, in the same manner as if the original will had been proved in such court. And where there shall be no executors named in the said will, or the executors therein named shall all of them refuse the executorship, the court shall have the same power and authority to hear and determine the right of administration, and to grant a certificate for obtaining letters of administration with the will annexed, as if the original will had been proved in court.

The three first sections of this act provide for the case of wills attested by persons residing out of the jurisdiction of the courts of Virginia. There is nothing in them which changes the principle as to the place where a will is to be proved. A man having a mansion-house in the commonwealth, might go abroad, make his will there and die: such will would in all probability be attested by persons residing where he died, that is, out of the jurisdiction of the courts of the commonwealth of Virginia. A man might have a mansion-house in Virginia, make his will there and have it attested by his neighbors, but prior to his death, all these attesting witnesses might have removed out of the commonwealth. Such cases are provided for by these sections.

It is important to attend to the *effect to be produced*, by a compliance with these provisions. The object of the act is, not to furnish testimony to the court where the will is to be recorded, submit the testimony to that court, and take their decision on it: on the contrary, the will is to be fully proved, before the commissioners abroad; they are to certify that proof, to the court where the will is to be recorded; and on that proof is it to be recorded. In other words, the commissioners are not to certify the *depositions of the witnesses*, but are to certify the facts proved by those depositions, and their certificate is to be conclusive evidence, to the court where the will is to be recorded.

The facts to be certified are—*First*, That the testator signed it as his last will and testament: Or, *Secondly*, That it was signed *as such*, by some other person, by his direction. *Thirdly*, That the testator was of disposing mind and memory. *Fourthly*, That the witnesses subscribed their names thereto. *Fifthly*, That such subscribing was in the presence of the testator. *Sixthly*, That it was at his request. This request of the testator, is not required by the act of 1748, by the act of 1785, nor by our act of 1797.

It seems, from a review of *all* our acts of assembly on the subject of wills, to have been the intention of the legislature, that where a will devising lands was written *wholly* by the testator, it should be valid, although not attested by any witnesses. Yet no provision is made for proving and admitting to record, such a will, where the hand writing of the testator cannot be proved, by persons within the jurisdiction of the court where it ought to be recorded. That such a case is not within the provisions of this act, is manifest—*First*, Because in the preamble of the act, the inconvenience suggested, is, the non-residence of *witnesses* who had *attested* the will. *Secondly*, Because the facts required to be certified, are irreconcilable with the idea, that any enquiry is to be made relative to the hand writing of the testator. *Thirdly*, Because if proof of his hand writing should be certified, the court are not by this act authorised, thereupon, to admit the will to record.

The power of sending commissions abroad, for the examination of attesting witnesses, is given by this act equally to the general court, to the supreme court for the district of Kentucky, and to the county courts.

The county courts were authorised to award such commissions, in two classes of cases—*First*, Where the witnesses resided out of the commonwealth. *Secondly*, Where they resided “out of the jurisdiction of the supreme court of that part of the country.” The reader will understand this expression, when he is informed, that the first act establishing district courts in Virginia, passed on the same day on which this act passed.

It seems then, that the county courts might issue process and bring the witnesses before them, if they resided anywhere within the judicial district comprising their county, but if they should reside out of such district, the same proceeding might and must be had, as if they resided out of the commonwealth.

It is worthy of observation, that the second section, in giving jurisdiction to the general court, and the supreme court for the district of Kentucky, uses the following language: "And if any witness or witnesses attesting the same, shall reside out of the jurisdiction of said courts respectively." Now a witness might reside out of the jurisdiction of the supreme court of Kentucky—*First*, By residing out of the commonwealth: *Secondly*, By residing in any part of the commonwealth, except the district of Kentucky.

A witness might reside out of the jurisdiction of the general court—*First*, By residing out of the commonwealth: *Secondly*, By residing in the district of Kentucky: for that district was rendered independent of the general court, by the act creating it.—Chan. Rev. 167-8.

Hence a commission might issue from the supreme court of Kentucky, to the eastern parts of Virginia, and from the eastern parts of Virginia, to the district of Kentucky, on the same principles, and in the same cases, in which it might issue to any other state or kingdom.

The act next makes a special provision for the case of persons who had died in Kentucky, and their wills, instead of having been recorded there, had been recorded either in the general court, or in the court of some county out of the district. The inconvenience suggested, was, that the wills could not be removed to the counties where the persons had died. That wills shall remain in the office where they shall have been recorded, is required by all the acts of Virginia and Kentucky on the subject; and from this expression it would seem, that their having been recorded in a wrong county made no difference.

The legislature seem to have acted under the erroneous belief, that a will was required, in all cases, to be recorded in the county where the testator had died. The remedy they provide is, authorising a copy to be recorded in place of the original. In order to the admission of a copy to record, it must, *First*, be attested—*Secondly*, There must be a certificate that it has been duly proved and recorded in such [wrong] court.

The only court in which this act authorises such copy to be admitted to record, is the court of the county in which the testator died. The supreme court for the district of Kentucky, the court of the county where his mansion-house or residence was, and the court of the county where his lands lay, are all excluded. This is not merely, not in conformity

with the then existing laws on the subject, but in direct opposition to the principles of all of them.

The jurisdiction on the subject of wills, given in the remainder of the act, is *in terms* confined to the general court only: but by the twelfth chapter of the acts of this session, was extended to the supreme court for the district of Kentucky.—(1 Litt. p. 483.)

We may hereupon remark, that from the preamble to, and the whole scope of, the latter provisions, there is reason to believe that the legislature intended to provide for a class of cases which had not been provided for by the former part of the act. The provisions in the former part of the act seem not to have embraced the case of a citizen or subject of another state, living, making his will, and dying, in his own country, but having property in the state of Virginia, and by his will devising such property. In such case it would naturally be presumed that the bulk of his property was in his own country, or at the least that by the laws of his own country, his will must be proved and recorded there: and in such case there would be a propriety in admitting a copy to be recorded in the state of Virginia, to regulate the disposition of the property he had there.

As to the wills mentioned in the first part of the act, the facts necessary to be proved in order to admit the will to record, are there explicitly stated; and agree *substantially* with the testimony required from the attesting witnesses, when they appear to prove a will, in the ordinary way, in open court. But as to the wills mentioned in the latter part of the act, neither the number of the witnesses, nor the facts they are to depose to, are stated. In the former case, the will is to be proved according to the laws of Virginia, in the latter case according to the laws of the foreign country.

It has been mentioned that on the second day of January 1788, the first act establishing district courts passed; that act however was not carried into effect, but at the next session an act passed which was. The latter act, in giving jurisdiction to the district courts, says, "they shall have the same jurisdiction concerning mills, wills, letters of administration, &c. as the general court now hath by law."—Session Acts of 1788, p. 31.

The act of 1789 to amend the district court law of the then last session, was passed the 17th day of December, and was in force from its passage. This act, after giving to the general court some jurisdiction in matters testamentary, and of

intestacy, which it was supposed the district court law might have deprived it of, introduces the following provision:

SESSION ACTS OF 1789, CHAP. XIII, PAGE 7.

"Sec. VII. Authenticated copies of wills proved according to the laws of any of the United States, or of countries without the limits of the same, and relative to any estate within this commonwealth, may be offered for probat in the general court; or where the estate so devised shall lie altogether in any one county or district, the court of such county or district respectively may admit to record any such authenticated copies, but the bond and oath of the executor or administrator with the will annexed, shall be changed from the bond and oath now required by law, in such manner as to the said court shall seem necessary, and the proof to be made by the witnesses shall be conformed to the nature of the case. But such will shall be liable to be contested and controverted in the same manner as the original might have been."

The act of 1785 had now been in force since the second day of January 1787: it contained no provision similar to the one just recited. The act of January 2d 1788, was not repealed by the present or any other act, unless it was repealed by implication; and these three acts continued as the directing law on these subjects in this country, until the 2d day of March 1797.

Under the provisions of the act already mentioned, making the supreme court of Kentucky a general court for that district, it is evident that that court might exercise the jurisdiction given by the 7th section of the act of 1789, to the general court. But in 1792 the district of Kentucky became an independent state, and although there were immediately established two courts of jurisdiction co-extensive with the new state, yet neither of them had any authority respecting the probat of wills, or admitting them to record.

The act of 1792 establishing county courts, &c. says, "The county courts shall and may have cognizance, and shall have jurisdiction, of all cases respecting wills, letters of administration, &c. and all other cases of which the county courts, as now constituted, have jurisdiction, except in those cases which are hereby expressly made cognizable in the court of quarter sessions."—1 Litt. p. 93-4.

Acts of 1793—"The justices of the county courts shall retain cognizance and jurisdiction, of all matters and things, which are not expressly given to the court of quarter sessions."—Litt. 1. 203.



The county court act of 1796, repeats the above mentioned clause of the act of 1792, *verbatim*.—1 Litt. p. 374.

There is no expression in any act of assembly, which gives to the county courts of Kentucky, in terms, any of the jurisdiction exercised by the general court of Virginia, or the supreme court of Kentucky. The power to receive probat of, and admit to record, an authenticated copy of a foreign will, was by the act of 1789, confined to the general court, and the supreme court for the district of Kentucky, except where the estate devised should be altogether in one county: and a question thereupon arises, whether a county court in Kentucky, could admit such copy to record, where the estate devised did not all lie in their county.

The 13th section of our act of 1797, is substantially, and almost literally, the same with the 7th section of the act of 1789, and our courts, as far as my observation has extended, have acted as if they were acting under the act of 1788; that is, they have received and admitted to record, such copies, as *wills proved*, not as *wills offered for probat*. If such proceedings are erroneous, it is not easy to estimate the consequences; and if they are authorised by law, frauds of the most alarming magnitude may be committed. I therefore submit to the consideration of the reader, the following comparison and analysis of the provisions of the respective acts. *First*, The authenticated copies are by both acts, required to be, of wills proved according to the laws of a foreign country. *Secondly*, Such wills are to relate to some estate within Virginia. *Thirdly*, The act of 1788 directs what shall be an authentication, within the meaning of that act; but on this subject the act of 1789 is silent. *Fourthly*, The act of 1788 says that the authenticated copy shall be admitted to record, in the same manner as if the original will had been proved by the witnesses thereto in open court: whereas the act of 1789 merely says that such copy *may be offered for probat*. *Fifthly*, The act of 1788 says nothing respecting the proof or the examination of witnesses; because, on the principle of that act, the *due proof* made in a foreign country, was received in lieu of the evidence of witnesses thereto in open court; but the act of 1789 says that "the *proof to be made by witnesses shall be conformed to the nature of the case*;" because on the principle of this act, the copy must be offered, not as a will *proved*, but as a will *to be proved*. If it shall be asked how a copy of a will is to be proved, except by the testimonial of the certifying officer? the answer is, that the copy may be trans-

mitted with a commission, in the same manner that an original will may, to any place where the subscribing witnesses may be found, and access had to the original; and the witnesses, on inspection of their signature, and comparing such copy with the original, may testify whether they subscribed in the presence of the testator, and at his request, the original will of which that is a true copy, &c.; or if there are no attesting witnesses, and his hand writing is to be proved by those who are acquainted with it, then the course of examination will be whether the original will, of which that is a copy, is in the hand writing of the testator? That the act of 1789 *does contemplate proof being made*, prior to the copy's being admitted to record, and that proof to be made by *witnesses*, appears manifest from the act itself.<sup>9</sup>

My opinion upon the whole is, that the act of 1789 is entirely different in principle from the act of 1788, and was intended as a substitute for, and virtual repeal of it.

The following facts tend to confirm me in that opinion: The act of 1788 made provision for authenticating foreign wills, *jointly with* foreign judgments, foreign policies of insurance, and almost every other legal instrument which has a name: the legislature of Virginia, on the 8th day of December 1792, re-enacted the act of 1788, as to every kind of instrument except wills, but made no mention of them. Five days afterwards they re-enacted *verbatim* the seventh section of the act of 1789, placing authenticated copies on the footing of wills *to be proved*: and there is nothing in their whole revised code, which goes to support the idea, that such copies were any longer to be considered as wills *which had been proved*. In 1797 the legislature of Kentucky re-enacted the seventh section of the act of 1789, and in the year following they re-enacted all that part of the act of 1788, which relates to the authentication of foreign judgments and all other writings except wills: on these they were silent. This latter act will be found in 2 Litt. p. 76, and is a transcript of the act of 1792 of Virginia, above mentioned.

As to the time in which a will may be proved, and the method of contesting it after it has been proved, we may observe that the act of 1748 contemplated two probats of wills devising lands from the heir; the one when the will was first produced in court: the court might then proceed, without any process to bring in the heir, to receive proof of the execution of the will, and a will thus proved would be valid as to personal estate; but would not be binding on the heir, un-

til a day had been appointed for him to come in and contest it, and actual or constructive notice given to him to appear on such day; if he should not appear on such day, or did appear and shewed no cause against it, the will was then proved as to the land devised. The act of 1785 admits of but one probat, authorises that to be made immediately, and does not require any notice, real or constructive, to be given to the heirs. When a will was fully proved under the act of 1748, it was instantly and forever binding, on all the adult heirs; but under the act of 1785, it remains traversable for the space of seven years. By the act of 1748, ten years were allowed for infants, *femes covert*, persons *non compos mentis*, imprisoned, or out of the colony, at the time of proving the will, after their disabilities should be removed, to contest the proof of the same; but the act of 1785 is entirely silent respecting all such persons. The act of 1748 prescribes no method, and points out no jurisdiction, by and before which the probat of a will might be contested: the act of 1785 does both.

Our act of 1797 differs from the Virginia act of 1785, in the following particulars: *First*, The saving in behalf of infants, *femes covert*, &c. in the eleventh section, is not in the Virginia act. This saving was introduced into the Virginia revised act of December 1792, but was not the law of Kentucky until the year 1797. *Secondly*, The twelfth and thirteenth sections of our act of 1797, are not in the act of 1785, nor does it contain any correlative provisions: the twelfth section was taken from the first part of the act of 1788, and the thirteenth section from the act of 1789.



# APPENDIX N<sup>o</sup>. III.

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## AN OUTLINE

OF THE DUTY OF

## JUSTICES OF THE PEACE.

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### PREFACE.

**I**T was with great reluctance that I entered on this subject at all, and the object of this preface is to caution my readers against expecting any thing more than a few hints, references and forms.

I know of but one work, in any country, written professedly for magistrates, from which any considerable advantage can be derived, and that work contains about 2000 pages.

The jurisdiction of magistrates, in this state, is more extensive than the jurisdiction of our court of appeals: it is co-extensive with our civil, penal and criminal codes, except only a part of the land law; and, notwithstanding their jurisdiction in civil cases is confined to small sums, yet the rules of right and of evidence are the same as in larger sums. We have not one law for sums under five pounds, and another for sums above it; but whether the sum be five or five thousand pounds, the law is the same: add to this, that the law of evidence, civil and criminal, is nearly the same in all courts, and a digest of that only, to be in any way intelligible, could not be comprized in less than five hundred pages.

The book above alluded to, is Dr. Burns's Justice of the Peace: it is an excellent work, but of very little use in this country, partly because the duties of magistrates are twice as extensive here as they are in England, but principally because the laws of the two countries are essentially different, where their jurisdiction is the same. A work on that plan, and somewhat larger, might answer the same purpose in this state

which that does in England ; but the price could not be less than \$ 25 : few magistrates would purchase it, and fewer still would read it. In England there is an uniformity of laws throughout that opulent and populous kingdom, and the book which would be authority in one part, would be equally so in another : but in America, with perhaps less population in the whole United States than there is in the single kingdom of England, we have, including the territories, more than twenty independent sovereignties, with different laws in each ; consequently a work on the plan of Dr. Burns's, written for the Kentucky magistrates, would be worse than useless to the magistrates of every other state and territory in the Union : of course the sale would be confined to Kentucky only—the reader may judge of the number of copies that could be sold.

But insurmountable as this obstacle is, there is another far more appalling. Such a work, in this state, could never be relied on. No man could undertake to execute it under two or three years. Now suppose he should commence in the spring, and labor assiduously at it until the next winter ; at that time it is almost absolutely certain that a few legislative acts would change or explode some part of what he had done. His system would be deranged, (and if his work had not system and order, it would be of but little use) he would of course have to expunge some chapters, compose others in their stead, and perhaps new model a very considerable part of it ; but at the next session, the same, or perhaps greater alterations would be made, and the same drudgery have to be submitted to again. Suppose by the middle of the second or third summer, he should have it finished, conformable to the *then* state of the law, and commit it to the press ; before it could possibly be printed, another legislature would intervene and explode another part of it, and he would be subjected to the humiliating and disgusting task of writing marginal notes, or an appendix, shewing that the book which had cost him so much time and labor, was not to be relied on. But if by a turn of good fortune, by no means to be calculated on, he could get the manuscript printed before any part of it should be repealed, yet it could not be of real use to any magistrate more than five years.

Dr. Burns had none of these difficulties to encounter. Moral experiments were not in fashion in his time or his country. He and his publishers knew that his work would be a safe guide to the current and ensuing generations, and yet he sold his manuscript for little more than a clerk would have charged for copying it.

As a number of magistrates have desired me to write a comprehensive directory for their use, I have availed myself of this opportunity of shewing them that it is absolutely impossible that their expectations can be realised. If what is contained in the following pages, will in some measure abridge their labor, it is all I dare promise, and all they ought to expect.

WILLIAM LITTELL.

## CHAPTER I.

*Of the appointment of Justices of the Peace, and their removal from office.*

**J**USTICES of the Peace are appointed by the governor, on the recommendation of the county courts respectively, a majority of all the justices concurring in such recommendation.—*New Constitution*, 1 Litt. p. 48.

If the county court shall for twelve months omit to recommend, after being requested by the governor so to do, he shall then nominate, and with the advice and consent of the senate, appoint.—*Ibid.*

The number of justices in each county is regulated by act of assembly; it being left to the legislature to determine what is a "competent number."—*Ibid.*

When a new county is formed, the justices for it are recommended to the governor by a majority of all the members of the house of representatives from the senatorial district or districts in which the county is situated.—*Ibid.*

Justices of the peace hold their offices during good behaviour, but may be removed from office on conviction of misbehaviour in office, or of any infamous crime, or on address of two-thirds of each house of the general assembly.—*Ibid.*

The removal from office, on conviction of misbehaviour in office, or of any infamous crime, it is believed, must be effected by impeachment, the constitutional provisions respecting which will be found in 1 Litt. p. 49. There was likewise an act passed in November 1792, regulating the proceedings on impeachments, (1 Litt. p. 132) a part of which is evidently unconstitutional, and it is believed no part of it can be obligatory.

As to the removal on the address of two-thirds of each house of the general assembly, it must be for a reasonable cause, which will not be a sufficient ground of impeachment

(New. Con. 1 Litt. p. 48.) Hence it seems that if the cause alleged amounts to an impeachable offence, a removal by address would be unconstitutional. This distinction, however, has not been attended to in practice.

As to the mode of conducting a prosecution by address, two acts of assembly have passed, one in 1799, 2 Litt. p. 355, the other in 1809.—4 Litt. p. 186.

When a justice shall be removed by impeachment or address, the secretary of state must notify it to the county court clerk, which he must record and file among the papers in his office.—2 Litt. p. 89.

Justices of the peace may likewise vacate their offices by resignation, by removing out of their respective counties, or by accepting any other office incompatible with that of justice, 1 Litt. 167, 2 Litt. 88, 437.

## CHAPTER II.

*Of the powers and duties of justices of the peace, individually, in civil suits.*

EACH justice of the peace has original and final jurisdiction, in all civil actions founded on contract, where the matter in dispute does not exceed twenty-five shillings; and original jurisdiction, subject to an appeal from his judgment to the county court, in all cases where the matter in controversy does not exceed five pounds.—1 Litt. p. 376. See also the preface to chap. 256, p. 373, of the same volume.

It was doubtful whether under the act of 1796, and the acts prior thereto, magistrates had jurisdiction, either where the original contract was for more than five pounds, and a balance not exceeding five pounds was claimed on it, or where the contract was not for the payment of money, but of property. To remove this doubt an act passed in February 1808, (3 Litt. p. 503) authorising a justice "to issue a warrant and give judgment on any bond, bill, note or open account, where the said bond, bill, note or open account was or shall hereafter be given or contracted for the sum of five pounds or upwards, payable in money or property, and shall be reduced below that sum by credits fairly endorsed on any of the above named vouchers."

In February 1809, an act was passed authorising the plaintiff to require the defendant to answer on oath respecting the plaintiff's demand, and giving the defendant the same right to



call on the plaintiff to answer on oath any matter alleged in avoidance.—4 *Litt.* p. 85.

In January 1812, an act was passed giving jurisdiction to justices of the peace of all debts and accounts not exceeding fifty dollars, subject to an appeal to the circuit court, in all cases where the matter in controversy should be above five pounds (4 *Litt.* p. 342). The constitutionality of this act being questioned, it was new modelled and amended by an act passed in January 1813.—*See Session Acts of 1812*, p. 42.

The second section of an act respecting the sales of the lands of non-residents, passed in 1802, gives to magistrates a jurisdiction which is certainly not limited, nor intended to have been limited by the sum of five pounds.—3 *Litt.* p. 84.

In all proceedings before a justice of the peace, except attachments, hereafter to be noticed, it is necessary that the warrant should have been actually executed on the defendant; but instead of this, a practice has prevailed, in some counties, of giving judgment on the officer's returning "not found," or "not at home, and a copy left." Such judgments are absolutely void, and every magistrate who renders them is liable to an action for so doing. In some cases the constable, on leaving a copy, will return the summons "executed:" in such cases the magistrate is not censurable, but the officer subjects himself to the penalties imposed on a false return, and is moreover liable to an action by the party. There is no law in force in this country which recognizes leaving a copy of a magistrate's warrant, as an execution of the warrant; and there is no law which authorises a magistrate to issue an attachment on the principle of attachments from courts, on the officer's return of "not found."

We shall now review the acts of assembly authorising justices of the peace to issue attachments. The first provision on that subject is contained in the 7th section of an act of 1748 (2 *Litt.* p. 505). This is confined to the case of landlord and tenant, and we may observe, *First*, That it is not necessary that the tenant should have removed, absconded or concealed himself, in order to entitle the landlord to an attachment. *Secondly*, That it is not necessary that the rent should be due at the time the attachment issues. *Thirdly*, That it is not requisite that the landlord should enter into any bond prior to the attachment's issuing, or afterwards. *Fourthly*, That an attachment cannot be obtained under this act, unless the landlord [the plaintiff] makes oath to the truth of his complaint. *Fifthly*, That the jurisdiction of the magistrate, in

awarding the attachment, is not limited by any sum. *Sixthly*, That the attachment is not returnable before the magistrate, but before the court. All attachments issued under this act, must now be made returnable to the circuit court.

The next act is the attachment law of 1796, sect. 5, 1 *Litt. p. 595*. On this act we may observe, *First*, That it is not necessary that the complaint should be on oath. *Secondly*, That an attachment cannot be obtained under it, unless the debt is due and the debtor is removing out of the county, privately, or absconds and conceals himself so that the ordinary process of law cannot be served on him. *Thirdly*, That the plaintiff must give bond and security before the attachment issues. *Fourthly*, That if the debt due does not exceed five pounds, it is returnable before and tried by the magistrate; but if it exceeds that sum, it must be made returnable to and tried by the quarter session, now the circuit court. The reader will find a collection of decisions of the court of appeals on this act in *Hardin's Reports*, p. 95.

The next is the attachment law of 1804 (3 *Litt. p. 239*). On this we may observe, *First*, That it applies entirely to debts under five pounds. *Secondly*, That the debt must be due. *Thirdly*, That the plaintiff must make oath to it, and state on oath how much is "justly due." *Fourthly*, That it is not necessary that the defendant should be about to remove himself, or should have absconded or concealed himself, if the plaintiff verily believes that he intends to remove his effects, or so dispose of them as to evade the payment of his debts, and makes oath to this belief, the attachment will lie. *Fifthly*, An attachment under this act, is to be directed to all the constables and sheriffs in the commonwealth. *Sixthly*, That such attachment is to be made returnable before, and may be tried by any magistrate in the state. *Seventhly*, That the plaintiff in this case must give bond and security, as is required in the attachments under the act of 1796.

As to the duties of justices in cases of distress for rent, they may be found in 4 *Litt. p. 271*.

The legal remedy in cases of forcible entry and detainer, may now be considered as a civil proceeding, and the magistrate will find his duty therein detailed in 4 *Litt. p. 182*, and likewise forms for all the process he is required to issue.

Forms of process, &c. in all the other cases mentioned in this chapter, I have subjoined.

*Form of a Warrant in Debt, for a sum under five pounds.*

\_\_\_\_\_ county, to wit.

The commonwealth of Kentucky to the constable of \_\_\_\_\_ district, in the said county, greeting:

You are hereby commanded to summon A B to appear before me, or some other justice of the peace for the county aforesaid, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, to answer B C, of a plea of debt for \_\_\_\_\_ due by (*account, or bond, or penal bill, or single bill, or promissory note, as the case may be*); and then and there make return how you have executed this warrant. Given, &c.

(If witnesses are required, they may be summoned thus:)  
Summon A W, B W, &c. witnesses for the plaintiff.

*Form of a Warrant in Detinue, for a sum under five pounds.*

\_\_\_\_\_ county, to wit.

The commonwealth of Kentucky to the constable of \_\_\_\_\_ district, in the said county, greeting:

You are hereby commanded to summon A D to appear before me, or some other justice of the peace for the county aforesaid, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, to answer B P, of a plea of detinue for \_\_\_\_\_ (*describe the property particularly*) of the price of \_\_\_\_\_ and then and there make return how you have executed this warrant. Given, &c.

*Form of a Warrant in Trover, and Conversion.*

\_\_\_\_\_ county, to wit.

The commonwealth of Kentucky to the constable of \_\_\_\_\_ district, in the said county, greeting:

You are hereby commanded to summon A T to appear before me, or some other justice of the peace for the county aforesaid, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, to answer B P, of a plea of trover and conversion, of \_\_\_\_\_ (*describe the property*) to his damage \_\_\_\_\_ and then and there make return how you have executed this warrant. Given, &c.

If the contract is for the payment of a particular sum, either in property, generally, or in any specific kind of property, it must be so stated in the warrant. If it is for the delivery of particular property, without fixing any price to it, instead of saying in a plea of debt, it will be best to say, to answer B C in damages for failing to deliver [here mention the property] as he was bound by covenant, note or promise, as the case may be, to do.

**NOTE.** All warrants must be directed to the constable of some particular district.

All warrants must, on the face of them, be made returnable to a particular day, and at a particular place; and any justice of the county may attend then and there and try them. The practice of leaving it to the discretion of the officer, when and where he will direct the defendant to appear, is unauthorised by law, and susceptible of great abuse.

A justice may issue a summons on the application of either party, for a witness residing in any county in the commonwealth. Such summons may be in the following form:

*Summons for a Witness.*

The commonwealth of Kentucky to the constable of \_\_\_\_\_ greeting:

You are hereby commanded to summon A W to appear before me, or some other justice of the peace for the county of \_\_\_\_\_ at \_\_\_\_\_ in the said county, on the \_\_\_\_\_ day of \_\_\_\_\_ next, to testify, and the truth to speak, in a certain matter of controversy, on warrant, depending and undetermined between A P, plaintiff, and C D, defendant; and this he shall in no wise omit, under the penalty, by law, in that case made and provided. Given under my hand, at the county of \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

An attachment, under the seventh section of the act of 1748, may be in the following form:

*Warrant of Attachment.*

To the sheriff of the county of \_\_\_\_\_, \_\_\_\_\_ county, to wit.

Whereas E D hath this day made oath before me, J P, a justice of the peace for the county aforesaid, that A B, his tenant, hath agreed to pay him for the rent of a plantation (or house, as the case may be) which the said A B now occupies, the sum of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, of which he has received no part, and that the deponent hath sufficient grounds to suspect, and verily believes, the said A B will remove his effects out of the county before the said rent will become due: therefore, in the name of the commonwealth, I require you to attach so much of the estate of the said A B, as will be sufficient to satisfy the said C D the rent aforesaid and costs; and if thereupon the said A B shall

Not enter into recognizance, with one or more sufficient securities, for the payment of the said rent, on the said ——— day of ——— next, and the costs, then that you secure the estate so attached in your hands, or so provide that the same may be liable to further proceedings herein, at the next court to be held for this county, when you are to make return of this warrant, with an account what you shall have done thereupon. Given, &c.

NOTE. This species of attachment must in all cases be directed to the sheriff.

*An Attachment on the act of 1796, where the debt does not exceed five pounds.*

Commonwealth of Kentucky.

——— county, ss.

To the sheriff or any constable of the county aforesaid, greeting:

Whereas A C hath this day made complaint before me, E F, a justice of the peace for the county aforesaid, that B D is indebted to him in the sum of ——— due by (*account, note, bill or bond, as the case may be*) with interest thereon from the ——— day of ——— and that the said B D [*is removing out of the county, privately*] or [*so absconds and conceals himself that the ordinary process of law cannot be executed on him*] (*as the case may be*) you are therefore commanded, in the name and by the authority of the commonwealth aforesaid, to attach the estate of the said B D, or so much thereof as will be of value sufficient to satisfy the said debt, together with interest thereon as aforesaid, and the costs, and the same in your hands to secure, so as to be liable to further proceedings thereon to be had according to law; and that you make return before me, or some other justice of the peace for this county, how you have executed this warrant.

An attachment for a sum exceeding five pounds, under the act of 1796, may be in the same form, except that it concludes in the following manner: "And the same in your hands so to secure, or so to provide, that the same may be liable to further proceedings thereon to be had at the next term of the circuit court to be held for this county and circuit."

It appears to have been the intention of the legislature, in 1803, to authorise constables to execute these attachments and return them to the sheriff of the county (*See 3 Litt. p. 131*). I say it seems to have been their intention so to do, for in

truth the kind of attachments there mentioned, are not recognised by law. Attachments will lie where a man is about to *remove his effects*, or actually *does* conceal himself; but I know of no law authorising an attachment merely because a man is *about to* conceal HIMSELF, unless he actually does so.

An attachment on the act of 1804, may be in the following form:

*Warrant of Attachment.*

\_\_\_\_\_ county, to wit.

To all sheriffs and constables within the commonwealth of Kentucky.

Whereas A C, of, &c. hath this day complained and made oath before me, I P, a justice of the peace for the county aforesaid, that C D, of the same county, is justly indebted to him in the sum of \_\_\_\_\_, (*by obligation, account, &c. as the case may be*) with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, &c. and that he the said A C hath grounds to suspect and verily believes, that the said B D intends to remove his effects: These are therefore, in the name of the commonwealth, to require you, and every of you, within your respective counties, corporations and precincts, to pursue and seize the effects of the said B D, or so much thereof as will be sufficient to satisfy the said debt, with interest thereon as aforesaid, and costs; and the same in your hands to secure, or so to provide that the same may be liable, upon further proceedings thereon to be had before me or some other justice of the peace of this commonwealth, to whom you are to make return how you have executed this warrant. Given, &c.

As to executions on the judgments of magistrates, the following forms, with little variation, will answer in all cases.

*Form of Fi. Fa. in debt.*

The commonwealth of Kentucky to the constable of \_\_\_\_\_ district, in the county of \_\_\_\_\_ greeting.

You are hereby commanded that of the goods and chattels of A D, in your district, you cause to be made the sum of \_\_\_\_\_ which B C lately before \_\_\_\_\_ one of the commonwealth's justices of the peace for the county of \_\_\_\_\_ hath recovered against him for debt; also \_\_\_\_\_ cents, which to the said B C, before the same justice, were adjudged for his costs, in that suit expended, whereof the said A D is convict; and that you have the said debt and costs before the said justice, the \_\_\_\_\_ day of \_\_\_\_\_ next, to render unto the

said B C, of the debt and costs aforesaid; and have then there this writ. Witness the said \_\_\_\_\_ at the county of \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year \_\_\_\_\_ and in the year \_\_\_\_\_ of the commonwealth.

*Form of Ca. Sa. in debt.*

\_\_\_\_\_ county, ss.

The commonwealth of Kentucky to the constable of \_\_\_\_\_ district of \_\_\_\_\_ county, greeting.

You are hereby commanded to take A D, if he may be found in your district, and him safely keep, so that you have him before \_\_\_\_\_ one of the commonwealth's justices of the peace for the county aforesaid, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ to satisfy B C the sum of \_\_\_\_\_ which the said B C lately recovered against him before \_\_\_\_\_ one of the commonwealth's justices of the peace for the county of \_\_\_\_\_ for his debt, also \_\_\_\_\_ which to the said B C were before the same adjudged for his costs in that suit expended, whereof the said A D is convict; and that you then and there return this writ. Witness, &c.

NOTE. If the execution is directed to the sheriff, then say, to the sheriff of \_\_\_\_\_ county, and instead of your district, say your bailiwick.

Executions ought *generally* to be returned before the justice where the judgment is: they may be sent in some cases into another county: in all cases they ought to have a certain return day on the face of them; but if the justice chooses, instead of mentioning the day and month, specially, to say on the thirtieth, or the fortieth, &c. day after the date hereof, it will do well enough, provided such day does not happen to be Sunday; if it does, the execution, and every thing done under it, will be void.

Various provisions on the subject of executions from justices, will be found in 1 *Litt. p.* 376, 2 *Litt. p.* 36, 466, 3 *Litt. p.* 126, 127, &c.

CHAPTER III.

*Of the duties of justices of the peace, in preventing the perpetration of crimes.*

THIS part of the duty of justices consists, *First*, In requiring surety to keep the peace. *Secondly*, In requiring surety for good behaviour.

*First*—As to surety for the peace, the duty of the justice will appear from an attention to the following forms.

*Form of the Oath to be administered to the person demanding surety of the peace.*

You shall swear that the surety for the peace which you now require against A O proceeds from a well grounded fear that the said A O will burn your house; or do you some corporeal hurt, or that he will procure some other person or persons to do you such injury; and that you have just cause to be afraid in consequence of the said A O's threats; and that you do not require such surety out of malice, or for vexation. So help you God.

*Form of a Warrant for the Peace.*

— county, to wit.

Whereas A J, of — in the said county, yeoman, hath personally come before me, J P, one of the commonwealth's justices, assigned to keep the peace in the said county, and hath taken a corporeal oath, that he, the said A J, is afraid A O, of — in the said county, laborer, will beat him (wound, maim, kill,) or do him some bodily hurt, and hath therefore prayed surety of the peace against him, the said A O: These are therefore on the behalf and in the name of the commonwealth to command you, that immediately upon the receipt hereof you bring the said A O before me, to find surety, as well for his personal appearance at the next circuit court to be holden for the said county, as also for his keeping the peace, in the mean time, towards the citizens of this commonwealth, and chiefly towards the said A J. Given under my hand and seal, at — in the said county, the — day of — in the year —. J P. [Seal.]

This warrant may be directed to and executed by the sheriff or any constable of the county. If the person complained of offers satisfactory surety, the justice is to take a recognizance from him and his surety, and discharge him. The recognizance may be in the following form:

*Recognizance for the peace or good behaviour.*

— county, to wit.

Be it remembered, that on the — day of — in the year —, A O, of — in the county aforesaid, yeoman, A S, of the same place, yeoman, and B S, of the same place,



yeoman, came before me, one of the commonwealth's justices of peace for the county aforesaid, and acknowledged themselves to owe to C M, Esquire, governor or chief magistrate of the commonwealth of Kentucky, and his successors, to wit, the said A O the sum of ——— dollars, and the said A S the sum of ——— dollars, and the said B S the sum of ——— dollars, current money of Kentucky, to be respectively levied and made of their several goods and chattels, lands and tenements, to the use of the commonwealth aforesaid, if he, the said A O, shall fail in performing the condition underwritten.

The condition of this recognizance is such, that if the above bound A O shall personally appear at the next circuit court, to be holden in and for the county of ——— aforesaid, to do and receive what shall then and there be enjoined him by the said court, and in the mean time shall keep the peace [*or*, he of the good behaviour; *or*, shall keep the peace, and be of the good behaviour] towards the commonwealth and all its citizens, and especially towards A J, of ——— in the said county, yeoman: Then the said recognizance shall be void, or else remain in full force.

If the person complained against, cannot or will not procure surety, the justice must commit him to jail, the mittimus for which may be in the following form.

*Mittimus for want of sureties.*

——— county, to wit.

To the constable of ——— and the keeper of the jail in the said county.

Whereas A O, of ——— in the said county, yeoman, is now brought before me, J P, one of the commonwealth's justices, assigned to keep the peace in the said county, requiring him to find sufficient sureties to be bound with him in a recognizance, for his personal appearance at the next circuit court to be holden in and for the said county, and in the mean time to keep the peace [*or*, be of the good behaviour] towards the said commonwealth, and all its citizens, and especially towards A J, of ——— in the said county, yeoman; and whereas he, the said A O, hath refused, and doth now refuse before me, to find such sureties: These are therefore, in the name of the commonwealth, to command you, the said constable, forthwith to convey the said A O to the common jail of the said county, and to deliver him to the keeper thereof there, together with this precept: And I do, in the name of

the said commonwealth, hereby command you, the said keeper, to receive the said A O into your custody, in the said jail, and him there safely keep, until he shall find such sureties as aforesaid, [*or, be otherwise discharged by due course of law*]. Given under my hand and seal, at ——— in the said county, this ——— day of ——— in the year ———.

But after the party has been committed, he may find surety or sureties, and with him or them enter into a recognizance, either before the justice who committed him, or any other justice of the county; in which case it will be the duty of the justice before whom the recognizance shall have been entered into, to issue a liberate for his discharge.

The liberate may be in the following form :

——— county, to wit.

J P, one of the commonwealth's justices, assigned to keep the peace within the said county, to the keeper of the jail in the said county, greeting :

Forasmuch as A Q, in the public jail in your custody now being, at the suit of A J, of ——— in the said county, yeoman, for the want of his finding sufficient sureties for his personal appearance at the next circuit court, to be holden in and for the said county, and for his keeping the peace [*or, being of the good behaviour*] in the mean time, towards the said commonwealth of Kentucky, and its citizens, and all especially towards the said A J, hath found before me sufficient sureties, to wit, A S, of ———, yeoman, and B S, of ———, yeoman, either of which hath undertaken for the said A O, under the pain of ——— dollars, and he, the said A O, hath undertaken for himself, under the pain of ——— dollars, that he, the said A O, shall and will personally appear at the next circuit court, to be holden in and for the said county, and shall well and truly keep the peace [*or, be of the good behaviour*] in the mean time, towards the said commonwealth, and all the citizens thereof, and especially towards the said A J : Therefore, on behalf of the said commonwealth, I do command you, that if the said A O do remain in the said jail, for the said cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will fall thereon. Given under my hand and seal, at ——— in the said county, this ——— day of ——— in the year ———.

*Secondly*.—Surety for good behaviour. An act of 1789, authorises justices of the peace to demand of such persons as

are *not of good fame*, sufficient surety and mainprize for their good behaviour (1 *Litt.* 466-7, in the notes). The description of persons from whom this surety may be demanded, is copied verbatim from the English statute on the same subject; and it is believed there never was a law in any country, the phraseology of which is liable to more just exceptions. *First*, To bring a person under the animadversion of the act, it is not necessary that he should be of bad fame, but merely that he should not be of good fame. Hence every stranger, and every obscure person, comes within the letter of it. Such persons are evidently persons not of good fame; for this manifest reason, they are persons of no fame at all. It would seem then that all such persons must be kept bound in a recognizance, until such time as the justice shall be satisfied they have acquired a sufficient quantity of good fame. It will be admitted, that any person, by being prosecuted under this act, will acquire some fame; but whether that fame will be good, or not, seems very questionable. But if we suppose the legislature to have meant persons of bad fame, the difficulty will not be much diminished. Whether, in a country where there is neither liberty of speech or of the press, being of bad fame would be criminal, need not now be decided: because, in this country, the utmost liberty of both is guaranteed by the government, and the extremest licentiousness of both connived at; so that whether a man shall be of good or bad fame, does not depend more on his own merit or deportment, than whether he shall be rich or poor. The English jurists have been sensible of the defects of their statute, and have laid down a number of rules respecting those who do, and those who do not come within its animadversions. As to those rules, it may suffice to observe, that not much regard is paid to the good or the bad fame of the party, or whether he has, in the ordinary acceptation of the word, any fame at all; but there must be connected with his demeanor and situation, all those circumstances which will necessarily raise a violent presumption, that individual security and public repose demand that he should be recognised or committed. The justice will sufficiently understand on what kind of persons he is to put this act in force, by attending to the following form.

*Warrant for the good behaviour.*

— county, to wit.

A P and B P, justices of the commonwealth, assigned to keep the peace within the said county, to the sheriff of the

said county, and to all and singular the constables, and other officers in the said county, greeting :

Forasmuch as we are given to understand, from the information, testimony, and complaint of many credible persons, that A O, of ——— in the said county, gentleman, and B O, of ——— in the same county, yeoman, are not of good name and fame, nor of honest conversation, but evil doers, rioters, barrators, and disturbers of the peace of the commonwealth, so that murder, homicide, strifes, discords, and other grievances and damages, amongst the citizens of the said commonwealth, concerning their bodies, are likely to arise thereby : Therefore, on behalf of the said commonwealth, we command you, and every of you, that you omit not by reason of any liberty within the county aforesaid, but that you attach, or one of you do attach, the aforesaid A O and B O, so that you have them before us, or others our fellows, justices of the said commonwealth, assigned to keep the peace within the county aforesaid, as soon as they can be taken, [or before the justices of the said commonwealth, assigned to keep the peace within the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, at the next circuit court to be holden in and for the said county] to find then before us (or the said justices) sufficient surety and mainprize for their good behaviour towards the said commonwealth, and all its citizens, according to the form of the statute in such case made and provided. And this you shall in no wise omit, on the peril that shall ensue thereon. And have you before us, [or, before the said justices, at the sessions aforesaid] this precept. Given under our seals, at the ——— in the county aforesaid, this ——— day of ——— in the year ———.

It is proper to remark, that this authority was seldom, perhaps never exercised in England, by a single justice of the peace; and there is nothing in any of our acts of assembly, favoring the idea that less than two can exercise it in this state.

There are cases in which persons are by particular acts of assembly required to give surety for their good behaviour, as by the act of 1748, against unlawful hunting, fishing or fowling, (2 *Litt.* 557) in which surety for good behaviour being a part of the magistrate's judgment, on a prosecution for, and conviction of a specific offence, the act of 1789, has no application to the case : the same observation applies to the act

of 1785, against circulating notes on private banks ; the prosecution must be for that offence, and not for being of ill fame ; and in no such cases can the justice require surety for good behaviour, except on a conviction of the particular offence for which the defendant is prosecuted.

As to the forms of the recognizance, mittimus, and liberate, the justice will readily see how those already given, in prosecutions requiring surety for the peace, may be adapted to prosecutions of this class.

#### CHAPTER IV.

*Of the duty of justices of the peace in bringing offenders to justice.*

BY an act of 1796, any justice of the peace "may by his warrant cause any traitor, felon, pirate, rioter, breaker of the peace, or other criminal offender, to be apprehended and brought before the next court of quarter sessions" (1 *Litt. p.* 505). This act passed two days after the act of the same session regulating examining courts ; and it appears (whatever the practice may have been) that the justice had an election, either to summon the justices of the quarter session court, according to the provisions of the former act, or to recognise, or commit for examination or trial, at the regular term of that court. Considerable difficulty arises on the phrase "other criminal offender." That it was not intended to confine the justice's authority to crimes where the punishment was infamous, appears from rioters and breakers of the peace being included ; and that it was not the intention of the legislature that every violation of the penal laws should be embraced by it, is inferable from their authorising an arrest, when by an act passed the same day, they declared that bail should not be required in actions to recover the penalty for the breach of any penal law not particularly directing special bail to be given (1 *Litt. p.* 492). We may conclude then that no justice can issue his warrant, under this act of assembly, in any case where the punishment is pecuniary only, however large the penalty may be, unless special bail is particularly required by the act imposing the penalty, or by some other act expressly directed to be taken ; and even in those cases, if the punishment is *merely* pecuniary, the jurisdiction of the justice is doubtful.

The circuit court law authorised a court of examination to be called in those cases only where the punishment of the crime was capital, or confinement in the penitentiary house, (3 *Litt. p.* 41) leaving all other offences to be prosecuted as permitted by the above recited act of 1796. The act abolishing courts of examination, requires the interposition of two justices, in those cases only where the punishment of the offence charged may be capital, confinement in the penitentiary house, or corporeal (4 *Litt. p.* 67). As it can scarcely be believed the legislature intended to style imprisonment in the common jails corporeal punishment, we may conclude that in all cases where the punishment of the offence is fine and imprisonment, or imprisonment only, the act of 1796 applies, and that it is the duty of a single justice to recognise the offender to appear before the circuit court at their next term.

The duty of justices, then, under our penal and criminal law, appears to be threefold: *First*, In a considerable number of cases, they have original and final jurisdiction. But in these cases the punishment is merely pecuniary, and the fine does not exceed five pounds. It will be understood that the anomalous proceeding under the riot act, forms an exception. But it is not to be understood that all offences, the penalty for which does not exceed five pounds, are cognizable before a magistrate; on the contrary, if the law imposing the penalty, or some other act of assembly, does not give the magistrate jurisdiction, or does not declare, in substance, that it shall be recoverable before any jurisdiction having cognizance of such sums, i. e. not exceeding five pounds, recovery cannot be had before a justice.

*Secondly*, Where the magistrate can give no final judgment against the offender, but must recognise or commit him for trial in the circuit court, without calling in the aid of any other justice. There are not many offences of this description, and the magistrate may meet with some difficulty in discriminating those in which he must exercise this jurisdiction, from those in which he has no jurisdiction. I shall therefore give an example or two. If an attorney appears under a power of attorney for confessing judgment, &c. he is subjected to a penalty of 500*l.* (1 *Litt. p.* 491.) A magistrate has no jurisdiction in this case, because the punishment is merely pecuniary, and because the defendant cannot be held to bail. If a minister joins any persons in marriage without license, he is subject to be imprisoned one whole year, without bail or mainprize, and shall also forfeit and pay 500*l.* (2 *Litt. p.*

68.) Of this offence a magistrate has cognizance, and must send the offender to the circuit court for trial, under the act of 1796. The justice has cognizance, because the punishment is not merely pecuniary; and he is not to call another justice to his aid, because the punishment is not corporeal.

*Thirdly*, Where a magistrate cannot singly take cognizance of the offence, but must call in another justice to his aid, both of whom may either discharge the prisoner or commit him for trial in the circuit court. The duty of the justice, in such cases, may be found in detail in 4 *Litt. p.* 67.

For the duty of a justice, in cases of bastardy, see 1 *Litt. p.* 282, &c.

For their duties in respect to gamblers, see 2 *Litt. p.* 284, 3 *Litt. p.* 176, &c.

For their duties in relation to offending slaves, see 2 *Litt.* 113, 215, 417, 3 *Litt. p.* 403, 4 *Litt. p.* 69 and 223.

For their duties in cases of riots, &c. see 2 *Litt. p.* 55.

For their duties in respect to vagrants, see 1 *Litt. p.* 288, &c.

For their duty in relation to taverns, see 1 *Litt. p.* 196.

For their duty in relation to strays, see 1 *Litt. p.* 77, &c.

For their duty in relation to runaways, see 2 *Litt. p.* 5, &c.

For their duty in respect to boatmen, see 1 *Litt. p.* 262. The act however seems to be unconstitutional.

*Form of a warrant for the penalty incurred by breach of an act of assembly.*

\_\_\_\_\_ county, to wit.

The commonwealth of Kentucky to the constable of \_\_\_\_\_ district, in the said county, greeting:

You are hereby commanded to summon A O to appear before me, or some other justice of the peace for the county aforesaid, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, to shew cause why the penalty of \_\_\_\_\_ should not be levied upon him, for, &c. (*here describe the offence particularly for which the law imposes the penalty*), of which the said A O is guilty, against the peace and dignity of the commonwealth of Kentucky, as I have been informed by B I, of \_\_\_\_\_, and then and there make return how you have executed this warrant. Given, &c.

*Form of a warrant in criminal cases, generally.*

Commonwealth of Kentucky, \_\_\_\_\_ county, viz.

Whereas J B, of \_\_\_\_\_, hath this day upon his oath, given information to me, E F, one of the commonwealth's justices.

of the peace for the county of ———, that on the ——— day of ——— last past, at the county of ——— aforesaid, O S, of ———, laborer, (*here describe the offence*) against the peace and dignity of the commonwealth of Kentucky. These are therefore in the name of the commonwealth, to require you to apprehend the said O S, and bring him before me, or some other justice of the peace for this county, to answer the premises, and further to be dealt with as the law directs. Herein fail not, but make due return of this warrant. Given under my hand and seal, this ——— day of ———, in the year of our Lord, &c.

To A B, constable, or any other sworn }  
officer in the said county of ——— }

## COUNTY COURTS.

### CHAPTER V.

*Of the jurisdiction, powers and duties of justices of the peace, in their corporate capacity as a county court.*

**T**HE establishment of county courts depends on the constitution (1 *Litt. p.* 48).

The whole jurisdiction and duty of county courts, in this country, is derived from statute law: for notwithstanding there were county courts in England, yet no part of the English law relating to those courts applies to ours.

The first general declaration of the jurisdiction of county courts, in our law, is that they should have cognizance of all matters which county courts had under the laws of Virginia, except such matters as were expressly made cognizable in the quarter session courts (1 *Litt. p.* 93 and 202). At this day, however, a reference to the Virginia code is seldom necessary, as most of the laws respecting these courts have been either re-enacted or repealed; and every power which they possess, with directions as to the exercise of it, may be found in these volumes, and in the acts of last session.

I shall first advert to some illegal practices, and then give references to the acts on the various subjects within the jurisdiction of the county courts.



*First*—It has been supposed that the county courts had a discretionary power of holding courts any where in the county town, if the court-house should be inconvenient or uncomfortable. It is true that the strong negative words of two acts of assembly, forcibly repel such an idea (1 *Litt. p.* 93 and 374); but they have been thought to be mere words of course. They were however intended to be imperative, to the full extent of their obvious meaning, and in this opinion I presume the reader will coincide, when he is informed that the old law of Virginia was in precisely the same words with these acts of assembly; that after the revolution, an act was passed giving the county courts discretion, under certain restrictions, to hold their courts at other places than those appointed by law, when their court-houses had been consumed by fire. Whereas our legislature, by adopting and repeating the old law on the subject, without any proviso, have given conclusive evidence of their intention that such discretion shall no longer exist.

*Secondly*—As to the appointment of constables, a practice has prevailed, in several counties, of appointing constables for the county generally. This is believed to be about as legal as it would be for the governor to appoint a man sheriff generally, or for the state at large. Every act of assembly says, that the county courts shall lay off their respective counties into districts, and shall appoint a constable in each (1 *Litt. p.* 101, 2 *Litt. p.* 35, 3 *Litt. p.* 126). From all which, it appears that the legitimate mode of proceeding, is first to make a district, and then to make an officer for it.

The duty of the county courts in procuring the appointment of surveyors, coroners, and justices of the peace, is dictated by the constitution, and will be found in 1 *Litt. p.* 48. Their agency in the appointment of sheriffs, is likewise provided for by the constitution, and will be found in 1 *Litt. p.* 47.

The act of 1796, contains an enumeration of many of the subjects over which they have jurisdiction. I shall take the subjects from that act, in the order in which they stand, and refer to the several acts where a specification of their duties may be found, and shall then add others which are not there enumerated.

1. WILLS. See 1 *Litt. p.* 613, &c.
2. LETTERS OF ADMINISTRATION. See 1 *Litt. p.* 618.
3. MILLS. See 1 *Litt. p.* 606, 3 *Litt. p.* 9, 4 *Litt. p.* 148.

4. ROADS. See 1 Litt. p. 633, 2 Litt. p. 431, 3 Litt. p. 126, 4 Litt. p. 361.

5. GUARDIANS. See 1 Litt. p. 674.

6. DEEDS. See 1 Litt. p. 372, 565, &c. 2 Litt. p. 262, 3 Litt. p. 358, 4 Litt. p. 163.

7. INSPECTIONS. There has been so much legislation on this subject, as to render it extremely perplexing. The new constitution empowered county courts to appoint inspectors (1 Litt. p. 44). This, under the former constitution, was to be done by the governor. But the county courts are now authorised to establish inspections, as well as to appoint inspectors (4 Litt. p. 13). A knowledge of the existing law, will be easiest obtained by reading the latest acts first, and so regularly back in the following order: 4 Litt. p. 167, 3 Litt. p. 526, 3 Litt. p. 329. This act repeals in part the acts establishing inspections of beef and pork. 3 Litt. p. 321, 3 Litt. p. 237. This act establishes inspections of beef and pork. 3 Litt. p. 123, 3 Litt. p. 20. This act establishes inspections of cotton. 2 Litt. p. 456, 2 Litt. p. 391, 2 Litt. p. 382, 2 Litt. p. 280, 2 Litt. p. 137. This is the great tobacco act. 1 Litt. p. 379, 335, 330, 258 and 135. It may likewise be necessary to refer to the indexes to the local laws in the several volumes, and possibly to some of a more general nature, not noticed here.

8. ORDINARIES. It is believed that the whole duty of county courts, on this subject, will be found in 1 Litt. p. 194, and same volume p. 363, relating to granting tavern license to ferry keepers. The act of 1804, 3 Litt. p. 246, is directory to the clerk of the county court, not to the justices.

9. PROCESSIONERS. 1 Litt. p. 554.

10. APPRENTICES AND SERVANTS. 1 Litt. p. 192 and 677, 2 Litt. p. 6.

11. FERRIES. 1 Litt. p. 361, 2 Litt. p. 219, 3 Litt. p. 361.

12. POOR. 1 Litt. p. 191, 2 Litt. p. 87, 3 Litt. p. 133.

13. APPEALS. 2 Litt. p. 411 and 465, 4 Litt. p. 56.

14. ESTABLISHMENT OF TOWNS. 1 Litt. p. 512.

15. DIVISION OF LANDS. 1 Litt. p. 690, 3 Litt. p. 18, 4 Litt. p. 238.

16. TITHEABLES. 1 Litt. p. 678, 4 Litt. p. 33.

17. REVENUE. 4 Litt. p. 159, same volume p. 261 and 420, Session Acts of 1812, p. 97.

18. BASTARDY. 1 Litt. p. 282, &c.

19. VAGRANTS. 1 Litt. p. 288, &c.

20. PATROLLERS. 2 Litt. p. 264.

21. SLAVES. 2 Litt. p. 215 and 417, 3 Litt. p. 403, 4 Litt. p. 69 and 223.

The greatest part of their duty will be found in the acts before referred to, but their jurisdiction is so extensive and variegated, that I must refer the reader to the general and particular indexes, for many things not noticed here. The constitution authorises them to appoint constables, jailors and collectors (1 Litt. p. 44); an act of assembly, passed the next session, declares that the appointment of all jailors shall be for and during the pleasure of the court by whom they are appointed (2 Litt. p. 294); an act of 1803 authorises county courts to dismiss constables from office, for failing to do their duty, or for misfeasance (3 Litt. p. 129); an act of 1804 authorises them to make an allowance to jailors, out of the county levy (3 Litt. p. 242).

## APPENDIX N<sup>o</sup>. IV.

### OF SHERIFFS.

**T**HE constitution provides for the appointment of sheriffs, and limits the duration of their authority (1 *Litt. p.* 47). But unless the person so commissioned shall give security, he cannot exercise the office (1 *Litt. p.* 580); and if after he has given security for the first year, and discharged the duties of the office for that time, he fails to give security for the second year, he forfeits his office, *ipso facto* (2 *Litt. p.* 323).

It would require a large volume to give a detail of the various duties and responsibilities of this officer. I shall therefore not attempt it, but shall advert to some popular errors and illegal practices, and shall then refer the reader to such legislative acts, contained in these volumes, as point out his duties at large.

*First*—It is not uncommon for sheriffs to refuse to give receipts for writs delivered to them to execute, under an idea that they are not bound so to do; but the law is imperative that they shall do it, if required (2 *Litt. p.* 524).

*Secondly*—It is supposed that if the sheriff returns what is called the truth of the case, on a writ delivered to him to be executed, he is justifiable. Now it will be admitted that a sheriff is not required nor permitted to make a false return; neither is he permitted, except in a few instances, (which will be noticed hereafter) to return what, in popular language, is called the truth of the case. A sheriff's return partakes of the nature of legal pleading, and must, in substance and form, accord with the requisitions of the law; and it is no more permitted to him to return a loose irresponsible jargon of facts, to the mandate of a writ, than it is permitted to a defendant to allege, by way of plea, a train of circumstances which he may call, and correctly call, the truth of the case.

If no ill consequences resulted from inartificial returns, I should not deem them worthy of reprehension; but the most outrageous injustice is daily practised, under the plausible

pretence of returning the truth of the case. For example: a man resident in Shelby county, is indebted to a citizen of Nelson; he goes into Nelson, and stays there publicly a number of days; his creditor takes out a writ and delivers it to the sheriff of Nelson; he, instead of executing it, returns the truth of the case, to wit, that the defendant is no inhabitant of his bailiwick. Now there can be no contest respecting the truth of this return; and if the writ had directed the sheriff to make enquiry whether the defendant was or was not an inhabitant of Nelson county, and to certify that fact to the court, there would be no doubt of the legality of it. But the writ does not direct any such enquiry to be made, and demands no such information from the sheriff. It directs him to take the defendant, if found in his bailiwick: where his place of residence is, or whether he has any at all, is a matter of no importance: if he can be found in the sheriff's bailiwick, he is bound to execute the writ on him.

Returns of this kind have been so frequent, that I suppose it will hardly be believed that they never were authorised by any law prior to the year 1812, and if authorised at all now, are permissible in a single class of cases only (4 *Litt. p.* 384).

The law by which this practice is pretended to be justified, may be found in 1 *Litt. p.* 584, and is in the following words: "If the defendant cannot be arrested by the sheriff, and shall be a known inhabitant of another county, the sheriff shall return the truth of the case, and thereupon process, as to such defendant, shall abate." The truth of the case here is not "no inhabitant of my bailiwick;" but, *first*, That the defendant cannot be arrested. The writ commands the sheriff to arrest him, and the sheriff is to return that he cannot do it. This is an answer to the writ. *Secondly*, That the defendant is a known inhabitant of another county. Now he might be no inhabitant of the sheriff's bailiwick, and yet not an inhabitant of any other county: for he might be a wandering person who had no place of residence, or he might reside in some other state; and in either of those cases, the plaintiff would have a right to continue the process until such time as the defendant could be arrested. The law makes the suit abate, not because the defendant is no inhabitant of the bailiwick of the sheriff who has the writ, but because he is a known inhabitant of another sheriff's bailiwick.

Where a writ is delivered to a sheriff so late that he cannot execute it, he is to return the truth of the case (1 *Litt. p.* 505); as likewise where a forthcoming bond shall not be complied

with (1 *Litt. p.* 671); and possibly in some other cases not now recollected, but in no case where an act of assembly does not expressly direct it.

The following acts treat professedly of the duties and responsibilities of sheriffs: 1 *Litt. p.* 81, 580, 2 *Litt. p.* 390, 436, 465, 3 *Litt. p.* 144, 169, 4 *Litt. p.* 271. There are many other acts, in which duties are enjoined and penalties imposed, such as the act subjecting lands to the payment of debts, the execution laws, the revenue laws, the acts respecting levies, the acts respecting mills and roads, the acts regulating proceedings in law and equity, and the acts regulating criminal prosecutions, &c.; in short, as a principal executive officer, his duty is co-extensive with our whole system of active jurisprudence and police.

*Thirdly*, The reader will probably be surprised to find any difficulty suggested as to what return the sheriff must make on mesne process, where, on using all the exertion required by law, he cannot find the defendant. The simple return of "not found in my bailiwick," was all that was required by common law, or by the acts of Virginia, and is all that was required by the district court law of 1795. But the act of 1796 (1 *Litt. p.* 493) says, on the return of *pluries*, that the defendant is not to be found, the court may order proclamation to issue, &c. Now as this is a method of obtaining judgment, without trial, and without actual notice to the defendant, courts have refused to render judgment, unless the sheriff's return was precisely conformable with the act of assembly. It is therefore advisable for the sheriff to return the *pluries*, in every case where the defendant cannot be found, in the precise words of the act of assembly. The proper return for the first and *alias capias*, in such case, is merely "not found within my bailiwick."

# APPENDIX N<sup>o</sup>. V.

## A REVIEW

OF THE ACTS OF ASSEMBLY AUTHORISING SUITS TO BE  
BROUGHT ON

### PROMISSORY NOTES,

AND THE

### ASSIGNMENT OF BONDS, &c.

**T**HE earliest act on this subject, which it is necessary to  
notice, is one passed in 1748, to take effect in 1751.—  
B. V. L. p. 248.

*An ACT for ascertaining the damage upon protested Bills of  
Exchange, and for the better recovery of Debts due on Pro-  
missory Notes, and for the assignment of Bonds, Obligations,  
and Notes.*

V. To the end the recovery of money upon promissory  
notes, and other writings without seal, may be rendered more  
easy, *Be it enacted, by the authority aforesaid,* That if any  
person or persons have signed, or shall sign, any note, or other  
writing, whereby he, she, or they, promise or oblige him, her,  
or themselves, to pay any sum of money, or quantity of to-  
bacco, to any other person or persons, such person or persons,  
to whom the same is or shall be payable, may commence and  
maintain an action of debt, and recover judgment for what  
shall appear due thereupon, with costs.

VI. *And be it further enacted, by the authority aforesaid,*  
That when any suit shall be commenced and prosecuted in  
any court within this colony for any debt due by judgment,  
bond, bill, or otherwise, the defendant shall have liberty, up-  
on trial thereof, to make all the discount he can against such

debt, and upon proof thereof the same shall be allowed in court.

VII. *And be it further enacted, by the authority aforesaid,* That it shall and may be lawful to and for any person or persons to assign and transfer any bond or bill for debt, or any such note as aforesaid, to any other person or persons whatsoever; and that the assignee or assignees, his and their executors and administrators, by virtue of such assignment, shall and may have lawful power to commence and prosecute any suit at law, in his, her, or their own name or names, for the recovery of any debt due by such bond, bill, or note, as the first obligee, his executors and administrators, might or could lawfully due: *Provided always,* that in any suit upon such bond, bill, or note, so assigned, the plaintiff shall allow all discounts that the defendant can prove, either against the plaintiff himself or against the first obligee, before notice of such assignment was given to the defendant.

On the first [5th] section of the foregoing citation, the following observations occur: *First,* That the only action given, is an action of debt. *Secondly,* That it is not necessary to the maintenance of the action, that the paper on which it is brought should be a formal promissory note. *Thirdly,* That the writing which will support an action, must be for the payment of a sum of money, or a quantity of tobacco. *Fourthly,* A note, or writing, for the payment of a sum of money, to be discharged by the delivery of a quantity of tobacco, is not within the act; it must be for the direct payment, either of money or tobacco.

On the second [6th] section, the following observations occur: *First,* The privilege of making discount, is given in actions of debt only: for although the action may be brought on a judgment, bond, bill, or otherwise, yet the only action mentioned, is debt. *Secondly,* That the act is silent as to the mode of bringing these discounts before the court, whether by plea or evidence.

On the third [7th] section, we may observe—*First,* That the legislature use the words *assign* and *transfer*, probably not intending the assignment should be legal, without a tradition of the bond or note. *Secondly,* That the act does not, in terms, authorise executors or administrators to assign bonds or notes given to their testators or intestates. *Thirdly,* That the only papers which it authorises the assignment of, are bonds and bills for debt, and notes as aforesaid (referring



to the 5th section) and consequently does not authorise the assignment of every paper, on which, under this act, an action of debt could be maintained: for under the description of other writing, given in the fifth section, an action of debt could be maintained on an article of agreement, if such article contained a promise or obligation to pay a sum of money, or quantity of tobacco, but the words "or other writing," are omitted in this section. *Fourthly*, The right of action is given to the assignees and their personal representatives, but the act is silent as to their heirs or devisees. *Fifthly*, The suits which the act permits the assignees to prosecute, are suits "at law." *Sixthly*, The object of the suit, it seems, must be the recovery of the debt; hence bonds with collateral conditions, seem not to be within the act. *Seventhly*, The actions given to the assignee, are the same which the obligee or his personal representatives might have maintained. *Eighthly*, The act does not expressly authorise assignees to assign to others, bonds or notes assigned to them; but that such privilege was intended, is inferable from the phraseology of the section.

This act continued without amendment or alteration, until the year 1786, when an act was passed, entitled "*an act prescribing a method of protesting inland Bills of Exchange, and allowing Assignees of Obligations to bring actions thereupon in their own names*," which contains the following provision: "An action of debt may be maintained upon a note or writing, by which the person signing the same, shall promise or oblige himself to pay a sum of money or quantity of tobacco to another. Assignments of bonds, bills, and promissory notes, and other writings obligatory, for payment of money or tobacco, shall be valid; and an assignee of any such may thereupon maintain an action of debt, in his own name, but shall allow all just discounts, not only against himself, but against the assignor, before notice of the assignment was given to the defendant."

This act took effect on the first day of July 1787. The first sentence is substantially the same with the fifth section of the act of 1748, and requires no additional observations. The second sentence renders valid, assignments of other writings obligatory for the payment of money or tobacco, as well as of bonds, bills and promissory notes; but the only action it authorises the assignee to bring, is an action of debt, and it does not, in terms, extend the right of action to the representatives of the assignee, personal or real.

On the 19th of December 1796, (both these acts being then in force) an act was passed concerning the assignment of bonds and other writings (1 *Litt. p.* 509). This act, which was in force from its passage, made bonds, bills, notes of hand, and promissory notes and all other writings whatsoever, assignable in the same manner as bonds and other writings for money or tobacco were by law assignable, and authorised the assignees to bring the appropriate actions. This act continued in force until the 10th of February 1798, when it was repealed, as well as the three sections which I have quoted from the act of 1748, leaving the act of 1786 in force. The repealing act (2 *Litt. p.* 75) declares, that all bonds, bills and promissory notes, whether for money or property, shall be assignable, and that the assignee may sue for the same, in the same manner the original obligee or payee might or could do. On this act we may observe—*First*, That it authorises the assignment of only three species of securities, to wit, bonds, bills and promissory notes; whereas the act of 1786, authorises the assignment of other writings obligatory, provided they be for the payment of money or tobacco. *Secondly*, This act authorises the assignment of bonds, &c. for property, generally; whereas the acts of 1748 and 1786, did not authorise the assignment of any writings, unless for the payment of money or tobacco. *Thirdly*, The word payment, is left out in the act of 1798, it being strictly applicable only to money or staple commodities. *Fourthly*, By the act of 1798, the assignee may sue in the same manner the assignor might: this, it is presumed, gives him the right not only of every appropriate common law action, but likewise to sue in chancery, if necessary; whereas, under the act of 1786, he could maintain no action, except an action of debt; and if, under the act of 1748, he could maintain any other, it must be an action at law for the recovery of the debt. *Fifthly*, The act of 1798, does not authorise an action to be maintained on any paper on which it was not maintainable before the passage of the act. That the reader may not be misled by the omission in the later acts, of authorising the executors and administrators of the assignees to bring suit, I will observe that the necessity of such provision seems to have been superseded by the 54th section of our act of 1797, respecting wills, executors, &c. (1 *Litt. p.* 624) which was copied from the Virginia act of 1785.

The following observations apply to all the foregoing acts: *First*, There is nothing said respecting the manner of effect-

suating an assignment, nor what shall be evidence of one: whether the assignment must in every case, or in any case, be by deed; whether it must in all cases be in writing, and if so, whether such writing must be signed by the assignor; or whether proof that the body of the assignment is in his hand writing, may be admitted, if there is no signature; and whether the assignment, if required in all cases to be in writing, must be endorsed on the assigned paper, or not, are questions left to be determined on the general principles of law relative to assignments. *Secondly*, That the legislature make use of the common law terms, assign, and assignments, and not of the *lex mercatoria* terms, endorse and endorsement; from which it may be inferred, that the assignee must be invested, by the assignment, with the entire legal right to the paper assigned: for by an assignment at common law, the assignor parted with the whole property.

I deem it proper now to exhibit the statute 3 and 4 of Anne, chap. 9, respecting promissory notes, that the reader may not be misled by the English decisions on it. This act (which was never in force in this country or in Virginia) declares, "That all notes in writing, that shall be made and signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant, or trader, who is usually entrusted, by him, her or them, to sign such promissory note, for him, her or them, whereby such person or persons, body politic and corporate, his, her or their servant or agent as aforesaid, doth, do or shall promise to pay to any other person or persons, body politic and corporate, his, her or their order, or unto bearer, any sum of money mentioned in such note, shall be taken and construed to be by virtue thereof due and payable to such person or persons, body politic and corporate, to whom the same is made payable; and also every such note, payable to any person or persons, body politic and corporate, his, her or their order, shall be assignable or endorsable over in the same manner as inland bills of exchange are or may be, according to the custom of merchants, and that the person or persons, body politic and corporate, to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same, in such manner as he, she or they might do upon an inland bill of exchange, made or drawn according to the custom of merchants, against the person or persons, body politic and corporate, who or whose servant or agent as aforesaid signed the same; and that any person or

persons, body politic and corporate, to whom such note that is payable to any person or persons, body politic and corporate, his, her or their order, is endorsed or assigned, or the money therein mentioned ordered to be paid, by endorsement thereon, shall and may maintain his, her or their action for such sum of money, either against the person or persons, body politic and corporate, who or whose servant or agent as aforesaid, signed such note, or against any of the persons that endorsed the same, in like manner as in case of inland bills of exchange; and in every such action, the plaintiff or plaintiffs shall recover his, her or their damages and costs of suit."

On this act the following observations occur: *First*, That it is not requisite to the validity of a promissory note, within this act, that the maker of it should have signed it with his own hand, or that it should have been signed by any person having a written authority from him so to do. If it is signed by any person usually entrusted to sign, &c. it is all the act requires. But on this subject all our acts are silent. If a note is legally executed, an action may be brought on it, and it may be assigned; but the legality of its execution must be tested by common law principles anterior to the statute of Anne, and independent of all the adjudications which have taken place on it. *Secondly*, This act legalises notes made payable to bearer. *Thirdly*, It declares that these notes (omitting those payable to bearer) shall be assignable, or *endorsable over*, in the same manner as inland bills of exchange; whereas it has been seen that none of our acts speak of endorsements, or have any allusion to bills of exchange. *Fourthly*, This act gives the right of action not only to the assignee of such notes, but also to any person to whom the money therein mentioned is, by endorsement thereon, ordered to be paid, whereas our acts of assembly give the right of action to the assignees only, and their personal representatives. I shall not discuss the question whether the ordinary endorsement of "pay the contents to" (*naming the person*) and signed by the payee, may not be received as *prima facie* evidence of an assignment, but the experience of every day shews that it is not *per se* an assignment, as nothing is more common than to make such endorsements to a person who has no interest in the paper or the money, and for no other purpose than to shew that his possession of the note is sanctioned by the proprietor, and that he has authority to receive the money, as his agent. *Fifthly*, This act does not specify the particular action which the payee or assignee of a promissory note may

bring, but refers to the practice on inland bills of exchange ; whereas our act gives the action of debt only. I believe there is no doubt but that the payee of a promissory note could, under this statute, maintain an action of debt against the payor, though from the conclusion of the citation above, it seems probable that the legislature did not expect an action of debt to be brought in any case whatever. But however that may be, it is certain that this act does authorise bringing other actions besides debt, on promissory notes, and that our acts of assembly do not.

As to the idea suggested, of the possibility, under our laws, of an assignment being made by parol and delivery, it is proper to observe, that the legislature of the year 1811, acted on the principle that an assignment must in every case be by writing (4 *Litt. p.* 385); and no doubt can exist, that since the passage of that act it must be ; but the question whether the assignment must be endorsed on, or annexed to the paper assigned, or may be on a separate piece of paper, remains as it was.

The same legislature seem likewise to have removed every difficulty which existed as to the species of action which might be brought on any unsealed instrument of writing (4 *Litt. p.* 385). This provision, however, is entirely prospective.

# APPENDIX N<sup>o</sup>. VI.

OF THE PROCEEDINGS IN CHANCERY

AGAINST

## ABSENT DEFENDANTS.

**T**HERE is no part of our jurisprudence which is more interesting than this, and none, perhaps, less understood. It is not, however, my intention, to arrogate to myself any peculiar knowledge on the subject, or to depreciate the attainments of others, but merely to bring into view the various statutory provisions respecting it.

The reason why the subject is so little understood, is because no proceeding similar, or nearly allied to it, exists in English jurisprudence; because the acts of assembly, on which alone it depends, are numerous, and some of them very obscure; and because no decision has ever been had in this country, nor, as I believe, in Virginia, calculated directly to try the *present* validity of those acts, and to test the proceedings had under them.

The first act on this subject is one passed in the year 1744. (B. L. p. 124.)

*An ACT for the relief of certain Creditors.*

I. WHEREAS great difficulties have arisen in the recovery of debts due to the inhabitants of this colony from persons residing in other parts of his majesty's dominions, or who have removed themselves into foreign parts, having effects here sufficient for the satisfying and paying such debts: for remedy whereof,

II. *Be it enacted, by the lieutenant governour, council, and burgesses, of this present general assembly, and it is hereby enacted, by the authority of the same, That if in any suit which hath been, or hereafter shall be commenced, for relief in*

equity, in the general court of this colony, any defendant or defendants, against whom any subpoena or other process shall issue, shall not cause his, her, or their appearance to be entered upon such process, within such time, and in such manner as, according to the rules of the court, the same ought to have been entered, in case such process had been duly served; and an affidavit or affidavits shall be made, to the satisfaction of such court, that such defendant or defendants is or are beyond the seas, or that, upon inquiry at his, her, or their usual place of abode, he, she, or they, could not be found, so as to be served with such process: then, and in such cases, the said court may not only make any order or orders to restrain and enjoin any person or persons in this colony, having any effects belonging to the defendant or defendants in their hands, or in any other manner debtors to the defendant or defendants, from paying, conveying away, or secreting, such debts or effects, until the further order or decree of the said court, but also may (if to the same court it shall seem necessary) order such effects to be delivered to the plaintiff or plaintiffs subject to the future order and decree of the said court, upon such plaintiff or plaintiffs giving such security as to the said court shall seem proper, for the return of the said effects, in such manner, and to such persons, as the said court shall adjudge; and the said court also shall and may make an order directing and appointing such defendant or defendants to appear, at a certain day therein to be named, of the next succeeding court; and a copy of such order shall, within fifteen days after such order made, be inserted in the Virginia Gazette, for two months successively, and published on some Lord's day, immediately after divine service, in such parish church or churches as the said court shall appoint and direct; and also, in every case, a copy of such order shall, within the time aforesaid, be posted up at the front door of the capitol, in the city of Williamsburg. And if the defendant or defendants do not appear within the time limited by such order, or within such further time as the court shall appoint, then, on proof made of such publication of such order as aforesaid, the court, being satisfied of the truth thereof, may order the facts of the plaintiff's bill to be taken *pro confesso*; but if the matter or cause of such suit or suits be for the adjustment and settlement of any account or accounts, and for satisfaction of what balances may appear due thereon, then, and in such cases, the court may, either by assigning and appointment of auditors, or in any other manner, proceed to the stating and set-

tlement of such account or accounts, and make such order and decree thereupon as shall be thought just, and may thereupon issue process to compel the performance of such decree, either by immediate sequestration of the real and personal estate and effects of the defendant or defendants (if any such can be found) or such part thereof as may be sufficient to satisfy the demand of the plaintiff or plaintiffs in the said suit, or by causing possession of the estate or effects demanded by the bill to be delivered to the plaintiff or plaintiffs, or by continuing the effects (if any) so ordered to be delivered on the return of the subpoena as aforesaid, or such part thereof as may be sufficient to satisfy the plaintiff or plaintiffs' demands and costs of suit, in the hands of the plaintiff or plaintiffs, or give such further relief or remedy as the nature of the case shall require. And the said court may likewise order such plaintiff or plaintiffs to be paid and satisfied his, her, or their demands, out of the estate or effects so sequestered, according to the true intent and meaning of such decree, such plaintiff or plaintiffs first giving sufficient security, in such sum as the court shall think proper, to abide such order, touching the restitution of such estate or effects as the court shall think proper to make concerning the same, upon the defendant or defendants' appearance to defend such suit, and paying such costs to the plaintiff or plaintiffs as the court shall order; but in case such plaintiff or plaintiffs shall refuse or neglect to give such security as aforesaid, then the said court shall order the estate or effects so sequestered, or whereof possession shall be decreed to be delivered, to remain under the direction of the court, either by appointing a receiver thereof or otherwise, as to such court shall seem meet, until the appearance of the defendant or defendants to defend such suit, and his, her, or their paying such costs, to the plaintiff or plaintiffs, as the said court shall think reasonable, or until such order shall be made therein as the court shall think just.

III. *And it is hereby further enacted, by the authority aforesaid,* That from and after the passing of this act if any defendant or defendants, by virtue of any writ of *habeas corpus*, or other process issuing out of the said court, shall be brought into court, and shall refuse or neglect to enter his, her, or their appearance, according to the rules and methods required by the said court, or to appoint an attorney of such court to act on his, her, or their behalf, respectively, such court may appoint an attorney of such court to enter an appearance for such defendant or defendants, respectively, and



such proceedings may thereupon be had in the cause as if the party had actually appeared.

IV. *Provided always*, That if the person against whom any decree shall be made, upon refusal or neglect to enter his, her, or their appearance, or appoint an attorney to act on his, her, or their behalf, shall be in custody, or forthcoming, so that he, she, or they, may be served with a copy of such decree, then he, she, or they, shall be served with a copy thereof, before any process shall be taken out to compel the performance thereof.

V. *Provided also*, That if any decree shall be made, in pursuance of this act, against any person or persons, being out of this colony, or absconding as aforesaid, at the time such decree is pronounced, and such person or persons shall, within seven years after the making such decree, return, or become publicly visible, then, and in such case, he, she, or they, shall likewise be served with a copy of such decree, within a reasonable time after his, her, or their return, or public appearance, shall be known to the plaintiff or plaintiffs; and in case any defendant, against whom such decree shall be made, shall, within seven years after the making such decree, happen to die before his or her return into this colony, or appearing openly, as aforesaid, or shall, within the time last before mentioned, die in custody before his or her being served with a copy of such decree, then his or her heir, if such defendant shall have any real estate sequestered, or whereof possession shall have been delivered to the plaintiff or plaintiffs, and such heir may be found, or if such heir shall be a *feme covert*, infant, or *non compos mentis*, the husband, guardian, or committee, of such heir, respectively, or if the personal estate of such defendant be sequestered, or possession thereof delivered to the plaintiff or plaintiffs, then his or her executor, or administrator (if any such there be) may and shall be served with a copy of such decree, within a reasonable time after it shall be known to the plaintiff or plaintiffs that the defendant is dead, and who is his or her heir, executor, or administrator, or where he, she, or they, respectively, may be served therewith.

VI. *Provided always*, That if any person or persons, so served with a copy of such decree, shall not, within twelve months after such service, appear, and petition to have the said cause reheard, such decree so made as aforesaid shall stand absolutely confirmed against the person and persons so served with a copy thereof, his, her, and their respective heirs,

executors, and administrators, and all persons claiming by, from, or under him, her, them, or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit.

VII. *Provided nevertheless*, That if any person so served with a copy of such decree shall, within twelve months after such service, or if any person not being so served shall, within seven years next after the making such decree, appear in court, and petition to be heard with respect to the matter of such decree, and shall pay down, or give security for payment of, such costs, as the court shall think reasonable in that behalf, the person or persons so petitioning, his, her, or their respective representatives, or any person or persons claiming under him, her, or them, respectively, by virtue of any act done before the commencement of the suit, may be admitted to answer the bill exhibited, and issue may be joined, and witnesses on both sides examined; and such other proceedings, decree, and execution, may be had thereon as there might have been in case the said party had originally appeared, and the proceedings had then been newly begun, or as if no former decree or proceedings had been in the same cause.

VIII. *Provided nevertheless, and be it enacted, by the authority aforesaid*, That if any person or persons against whom such decree shall be made, his, her, or their heirs, executors, or administrators, shall not, within seven years next after the making of such decree, appear and petition to have the cause reheard, and pay down, or give security for payment of, such costs, as the court shall think reasonable in that behalf, such decree made as aforesaid shall stand absolutely confirmed against the person and persons against whom such decree shall be made, his, her, and their heirs, executors, and administrators, and against all persons claiming, or to claim, by, from, or under him, her, them, or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit; and at the end of such seven years it shall and may be lawful for the court to make such further order as shall be just and reasonable, according to the circumstances of the cause.

The act of 1777, establishing a high court of chancery, has the following provision (*Chan. Rev. p. 69*).

XXXVI. If any suit shall be depending, or hereafter commenced, against any defendant or defendants who are out of

this country, and others within the same, having in their hands effects of, or otherwise indebted to, such absent defendant or defendants; and the appearances of such absentees be not entered, and security given to the satisfaction of the court for performing the decrees, upon affidavit that such defendant or defendants are out of the country, or that upon inquiry at his, her, or their, usual places of abode, he, she, or they, could not be found, so as to be served with process, in all such cases the said high court of chancery may make any order, and require surety if it shall appear necessary, to restrain the defendants in this country from paying, conveying away or secreting the debts by them owing to, or the effects in their hands of such absent defendant or defendants, and for that purpose may order such debts to be paid and effects delivered to the said plaintiff or plaintiffs, upon their giving sufficient security for the return thereof to such persons, and in such manner as the court shall direct.

XXXVII. The court shall also appoint some day in the succeeding term for the absent defendant or defendants to enter his or their appearance to the suit and give security for performing the decree, a copy of which order shall be forthwith published in the Virginia Gazette, and continued for two months successively, and shall also be published on some Sunday immediately after divine service in such parish church or churches as the court shall direct, and another copy shall be posted at the front door of the said court. If such absent defendant or defendants shall not appear and give such security within the time limited, or such farther time as the court may allow them for good cause shewn, the court may proceed to take such proof as the complainant shall offer; and if they shall thereupon be satisfied of the justice of the demand, they may order the bill to be taken as confessed, and make such order and decree therein as shall appear just, and may enforce due performance and execution thereof by such ways and means as hath heretofore been used for enforcing other decrees, requiring the plaintiff or plaintiffs to give security as the court shall approve for abiding such future order as may be made for restoring the estate or effects to the absent defendant or defendants, upon his or their appearance and answering the bill; and if the plaintiff or plaintiffs shall refuse to give or not be able to procure such security, the effects shall remain, under the direction of the court, in the hands of a receiver, or otherwise for so long time, and shall then be finally disposed of in such manner, as to the court shall seem just.

XXXVIII. If any defendant or defendants shall be in custody upon any process of contempt, and be brought into court by virtue of a writ of *habeas corpus* or other process, and shall refuse or neglect to enter his or her appearance according to the rules of the court, or appoint an attorney of the court to do the same for him, the court in such case may direct an attorney to enter an appearance for the defendant or defendants, and thereupon such proceedings may be had as if he or they had actually entered an appearance; but if such defendant or defendants shall be in custody at the time a decree shall be made upon refusal or neglect to enter an appearance or to appoint an attorney as aforesaid, or shall be forthcoming so as to be served with a copy of the decree, then such defendant or defendants shall be served with such copy before any process shall be taken out to compel the performance thereof, and if such defendant or defendants shall die in custody before such service, then his heir, if any real estate be sequestered or affected by such decree, or if only personal estate, his executor or administrator shall be served with a copy in a reasonable time after such death shall be known to the plaintiff, and who is such heir, executor, or administrator.

XXXIX. If any person or persons, who shall be out of the commonwealth at the time any decree is pronounced as aforesaid, shall within seven years from the passing such decree return and appear openly, or, in case of his or her death, if his or her heir, executor, or administrator, shall within the said seven years be and appear openly within this commonwealth, the plaintiff or plaintiffs, their executors or administrators, shall serve such person or persons so returning or appearing with a copy of the decree within a reasonable time after such return or appearance shall be known to the plaintiff or plaintiffs, and thereupon such defendants or their representatives may within twelve months after such service, or those defendants not served with a copy, or their representatives, may within seven years after the decree pronounced, appear in court and petition to have the cause reheard, and upon their paying down or giving security for payment of such costs as the court shall think reasonable, they shall be admitted to answer the bill, and issue may be joined and witnesses on both sides examined, and such other proceedings, decree, and execution had, as if there had been no former decree in the cause; but if the several defendants, or their representatives, upon whom the decree shall be so served, shall

not within twelve months after such service, and the other defendants, or their representatives, upon whom no such service is made, shall not within seven years from the time of the decree pronounced, appear and petition to have the cause reheard as aforesaid, and pay, or secure to be paid, such costs as the court may think reasonable, all and every decree to be made in pursuance of this act, against any defendant or defendants so failing, shall stand absolutely confirmed against him, her, or them, his, her, or their heirs, executors, or administrators, and all persons claiming under him, her, or them, by virtue of any act or conveyance done or made, subsequent to the commencement of the suit, and at the end of such term the court may make such farther order for quieting the plaintiff or plaintiffs in any such suits, in their possession of and title to the estate and effects so sequestered or made liable, as to them shall seem reasonable.

The chancery act of 1787 (Session Acts p. 12) has the following provision :

Whereas it hath been doubted, whether the power of the court of chancery to proceed against absent debtors, can be extended to other absent defendants :

Sec. III. *Be it enacted*, That in all cases whatever, where a suit is or shall be depending in the court of chancery, concerning any matter or thing whatever against any absent defendant or defendants, the court may, on satisfactory proof to them made, that such defendant or defendants is or are out of this commonwealth, or that upon enquiry at his, her, or their usual place of abode, he, she, or they could not be found, make any order similar to that which is directed to be made in case of absent debtors, adapting the same to the nature of the case, a copy of which order shall be published in like manner as is directed in case of absent debtors, and thereupon, if the appearance of such absent defendant or defendants be not entered, the complainant may proceed in like manner as if an appearance had been entered. *Provided always*, that where such decree shall be made, such absent defendant or defendants may at any time within seven years, be permitted to file his, her, or their answer, and to shew cause why the said decree should be set aside, upon which the court may make such decree as shall appear to be equitable.

It will readily be perceived that our act of 1796 (1 *Litt. p.* 593) is compounded of the act of 1777 and 1787, but so compressed as not to be very intelligible.

It is a constant practice to enforce these acts to their utmost extent, against persons who never were citizens of, or resident within this commonwealth. I feel no disposition to discuss the stupendous questions which such a practice must one day produce; but will merely remark, that, admitting the validity of the acts, they must be *strictly* pursued, in order to render any proceeding under them legal.

## APPENDIX N<sup>o</sup>. VII.

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[The following Acts have never been printed before; they are now printed *verbatim* from the rolls.]

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### AN ACT

*To reduce into one the several acts subjecting lands to the payment of debts.*

SEC. 1. **B**E it enacted by the general assembly, That lands, tenements and hereditaments, shall and may, by virtue of writs of *fiery facias*, be taken and sold in satisfaction of all judgments, in manner herein after prescribed.

Sec. 2. The same actions which will lie against executors or administrators, may be brought jointly against them and the heirs and devisees of the dead person, or both, and shall not be delayed for the non-age of any of the parties.

Sec. 3. The clerk from whose office a writ of *fiery facias* shall issue, upon a judgment against the party convict, or against the executors or administrators of his heirs and devisees, shall, after the words "we command you that of the," leave out the words "goods and chattels," immediately them, and instead of the latter, insert the word "estate;" and by virtue of such writ, the officer to whom it shall be directed shall and may, in the manner herein after prescribed, make the debt or damages and costs recovered, first of the goods and chattels, exclusive of slaves; and if there be no such goods and chattels, or not sufficient; found in his bailiwick, then of the slaves; and if there be none, or not sufficient, found in his bailiwick, lastly of the lands, tenements and hereditaments in possession, reversion or remainder, or so much thereof, in one or more entire parcels, as shall be sufficient, and such part as the owner shall direct, if he thinks proper.

Sec. 4. Every writ of *feri facias* shall bind the property of the lands, tenements and hereditaments, from the time it shall be delivered to the officer, who shall, without fee, endorse on every writ the day, and time of the day, when he received the same.

Sec. 5. But if the owner shall refuse or neglect to point out some place within the settlement, at which the sale may be made, then the sheriff shall proceed to make sale of the land at the court-house of the county wherein the land shall lie.

Sec. 6. If the party against whom a judgment shall be entered, have several parcels of land which lie in one and the same county, he, or his agent, may, by his writing, under his hand, at any time before the day of sale, require the sheriff or officer to whom a writ of *feri facias*, upon the judgment, shall be directed, to make the debt or damages and costs of such of the said parcels as the owner or his agent shall think proper; and if the parcels lie in different counties, the clerk shall and may, at the like request in writing, direct the *feri facias* to the sheriff or other officer of any county which the party or his agent, making oath or solemn affirmation that he hath land there, shall particularly mention, at any time before the writ shall be delivered to the officer; and if the debt or damages and costs be made of any other parcel of land lying in any other county than that mentioned in such written requisition, the sale of such other parcels, or of the lands in such other county, shall be void. If the owner shall not pay the debt or damages and costs before, or at the day of sale, the sheriff or officer shall proceed to sell the lands, tenements and hereditaments, or such estate and interest as the party convict shall have therein, or so much thereof as will be sufficient, laid off in one or more sufficient ——— as it may be done, in such place and manner as the owner or his agent, if he thinks proper, shall direct.

Sec. 7. The courts of quarter sessions in every county shall appoint five persons as commissioners in their county, whose duty it shall be, when called upon by the sheriff, to ascertain the value of any tract or parcel of land which may be taken by execution; and no tract or parcel of land shall be sold by virtue of any execution, unless the price for which it is sold is at least three-fourths of its value, in the opinion of the commissioners, any three of whom shall be sufficient to fix or ascertain the value of the land; and if any commissioner, after being lawfully summoned, shall fail or refuse to attend and perform the duties required by this act, without a reasonable



excuse, such commissioner, for every such failure or refusal, shall forfeit and pay the sum of fifteen dollars, to be recovered before a justice of the peace, by any person who shall sue for the same: *Provided always*, that land shall not be taken by execution for debt or damages, if there be slaves or personal property sufficient to pay the debt or damages, unless the defendant should request that his land should be taken, instead of the other property; in which case, if he produce to the sheriff levying the execution, sufficient vouchers, or make other proof sufficient to satisfy said sheriff that he has a right to the land so tendered instead of the other property, he shall receive it; and the defendant shall moreover shew the lands so tendered, to the sheriff and commissioners, before his other property shall be released from the execution. If the land so tendered and received, will not sell for three-fourths of its value, in the opinion of the commissioners, the sheriff shall sell so much thereof as will be sufficient to satisfy the debt and costs, at three months' credit, taking bond and security for the payment thereof, and shall lodge the same in the clerk's office from which the execution issued, under the same regulations as bonds for the delivery of property are now directed by law to be lodged in the clerk's office; and the bonds so taken and lodged, shall have the same force as replevy bonds, and shall be proceeded on in the same manner, in case the money shall not be punctually paid; saving, however, to debtor, the right of releasing his land by giving bond and security to pay the money due on the execution, in three months from the date; and if the money shall not be paid on his bond according to the condition thereof, it shall be returned by the sheriff to the clerk's office, and proceeded on as before directed. But if the sheriff can find no other property to levy the execution on, or not sufficient to pay the same, he may levy the execution on any lands of the debtor that he can find in his county, and shall have the same valued by commissioners as aforesaid, and shall in other respects proceed as before directed by this act: *Provided nevertheless*, that nothing herein contained shall subject lands to the payment of any debt that originated or became due prior to the seventeenth of December 1792.

Sec. 8. In all sales of land by virtue of an execution, the sheriff or other officer shall convey the same to the purchaser, in writing, indented, sealed and recorded as the law directs for other conveyances of land; which deeds shall recite the

execution, purchase and consideration, and shall be effectual for passing to the purchaser all the estate and interest which the debtor had, and might lawfully part with, in the lands.

Sec. 9. The commissioners shall be allowed nine shillings, each, for every day they shall attend the valuation of any land, to be paid by the party claiming the same; and the sheriff shall be allowed the same for attending the commissioners, to be paid by the defendant or debtor.

Sec. 10. In every bond to be taken pursuant to this act, the payment of the debt, damages or costs, by the debtor, or by the purchasers on the sale upon credit, it shall be mentioned on what occasion the same was taken; and such bond shall have the force of a judgment, and be also assignable.

Sec. 11. *And be it further enacted,* That where any bond, directed or permitted to be given by this act, shall be assigned, and execution issued thereon against the original obligor or obligors, and on such execution there shall be a return by the sheriff or other officer, that there was no estate, or not sufficient estate of the obligor or obligors, to make the debt and costs, it shall be lawful for the clerk who issued such execution to issue a second execution against the assignor or assignors of such bond, for the debt mentioned therein, or such part thereof as shall appear to be still due; on which execution there shall be similar proceedings to those in any execution against the original obligors.

Sec. 12. If the sheriff or other officer shall fail to deliver or return as aforesaid, any bond taken by virtue of this act, within thirty days from the date thereof, he shall be liable to the same penalty, for every month of such failure, to be recovered in the same manner as is directed by law against a sheriff or other officer failing to return an execution. Saving and reserving to the widows, all right of dower which they may have in any of the said lands, tenements or hereditaments.

EDMUND BULLOCK, S. H. R.

JOHN CAMPBELL, S. S. P. T.

Approved, February 12th, 1798.

JAMES GARRARD, G. K.

By the Governor.

HARRY TOULMIN, Sec'y.

## AN ACT

*For the division of Campbell County.*

Sec. 1. *BE it enacted by the general assembly,* That from and after the first day of June next, all that part of Campbell county that is included in the following bounds, to wit: Beginning at the mouth of Dry creek, which is about seven miles below the mouth of Licking, running thence a direct line to a point one half mile east of Archibald Reed's; from thence to the Bullock Pen on the Cincinnati road, and that direction till it strikes the line that may be fixed upon for the upper division of the said county, where it will cross the road that leads from the mouth of Licking towards Georgetown; thence along the said line to the Franklin line, and with the said line to the Ohio, and up the Ohio to the beginning, shall be one distinct county, and called and known by the name of Boone. But the said county of Boone shall not be entitled to a separate representation, until the number of free male inhabitants therein contained, above the age of twenty-one years, shall entitle them to one representative, agreeably to the ratio that shall hereafter be established by law.

Sec. 2. A court for the said county shall be held by the justices thereof, on the third Monday in every month, after the said division shall take place, in like manner as is provided by law in respect to other counties, and as shall be by their commissions directed. The justices to be named in the commission of the peace for the said county of Boone, shall meet at the house of William Cave, in the county aforesaid, upon the first court-day after the said division shall take place, and having taken the oaths prescribed by law, and a sheriff being legally qualified to act, the justices shall proceed and qualify a clerk, and fix upon a place for holding courts in said county; and the said court shall proceed to erect the public buildings at such place; and until such buildings are completed, shall appoint such place for holding courts as they may think proper: *Provided always,* that the appointment of a place for the erection of the public buildings, and of a clerk, shall not be made unless a majority of the justices of the court of the said county concur therein; but such appointment shall be postponed until some court day when a majority shall be present; but the court may appoint a clerk *pro tempore*.

Sec. 3. It shall be lawful for the sheriff of Campbell county to collect and make distress for any public dues or officers'

fees which shall remain unpaid by the inhabitants thereof at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made.

Sec. 4. The court of Campbell shall have jurisdiction in all actions or suits in law or equity that shall be depending before them at the time of said division, and shall try and determine the same; issue process and award execution thereon.

Sec. 5. *And be it further enacted*, That the court of quarter sessions for said county shall be held annually in the months of March, May, August and November.

EDMUND BULLOCK, S. H. R.

ALEXANDER S. BULLITT, S. S.

Approved, December 13th, 1798.

JAMES GARRARD, G. K.

By the Governor.

HARRY TOULMIN, Sec'y.

# INDEX

## TO ALL THE VOLUMES.

— 0 —

*The Roman numerals refer to the volume, and the figures to the page—E. is put for Eng-  
lish, and V. for Virginia, in this index.*

### ABANDONMENT.

Abandonment of wives by husbands, iv. 407.  
— of children by parents, iv. 407.

### ABATEMENT.

Suits not to abate for want of form, (V) i. 486.  
When not to abate by death, i. 489, ii. 441.  
What suits shall not abate by death, iv. 384.

### ABATEMENT, PLEA OF.

Inactions real, what may be plead in, i. 492.  
In writs of partition, not allowed, i. 511.  
To be on oath, i. 498.  
When not to be filed, ii. 402, iv. 177.  
Plea of, in chancery, when not allowed, i. 523.  
Abatement by sheriff's return, i. 84, 584.  
Abatement of indictments for want of addi-  
tion, i. 473.

### ABDUCTION.

Abduction of women, punishment of, ii. 469.  
— of children, do. ii. 470.

### ABSENT DEFENDANTS.

Absent defendants at law, proceedings a-  
gainst, i. 308, 498.  
In writs of right, ii. 3, 4.  
In chancery proceedings against, i. 316, 593,  
&c. iii. 108, iv. 180.  
On motions to revive in chancery, ii. 404.  
Against absent officers by their securities, ii.  
296.

### VOL. IV.

### ABSENTEES.

Death of, when presumed, ii. 28.  
Relief against the consequences of such pre-  
sumption, ii. 28.

ABUSING THE NAME OF GOD, (E)  
ii. 553.

ABUSING FEMALE CHILDREN, ii.  
469.

### ACADEMIES.

Kentucky academy established, i. 228.  
Franklin academy established, i. 296.  
Academies, certain, endowed, ii. 107.  
Trustees of, may sell part of their lands, ii.  
419.  
New-Athens incorporated, ii. 242.  
Bethel established, ii. 174.  
Bourbon established, ii. 237.  
— incorporated, ii. 242.  
Bracken incorporated, ii. 242.  
Bullitt incorporated, ii. 243.  
Fleming incorporated, ii. 241.  
Franklin, register's duty respecting, ii. 379.  
Hardin incorporated, ii. 242.  
Harrison incorporated, ii. 241.  
Harrodsburgh incorporated, ii. 240.  
Hartford incorporated, ii. 242.  
Jefferson to make a lottery, ii. 208.  
Additional trustees to, ii. 378.  
Explanatory act respecting, ii. 429.  
Kentucky academy, its trustees, &c. ii. 164.  
Lancaster incorporated, ii. 242.  
Madison incorporated, ii. 241.

3 T

## [ACA]

## INDEX.

## [ACT]

Montgomery incorporated, ii. 241.  
 Newport incorporated, ii. 240.  
 Newton incorporated, ii. 241.  
 Rittenhouse incorporated, ii. 240.  
 Shelby incorporated, iii. 241.  
 Stanford incorporated, ii. 240.  
 Washington academy incorporated, ii. 242.  
 Winchester established, ii. 217.  
 Woodford incorporated, ii. 243.  
 Academies, how surveyors may collect fees from, iii. 36.  
 Allowed further time to locate their lands, iii. 36.  
 Allowed to sell half their lands, iii. 206.  
 Summerfett academy incorporated, iii. 37.  
 Logan, trustees appointed to, iii. 206.  
 Jefferson, trustees appointed to, iii. 207.  
 Salem, trustees of, vested with certain powers, iii. 207.  
 New-Athens, time to locate their lands, iii. 333.  
 Academies lately established may sell half their lands, iii. 334.  
 Stanford, powers of trustees of, iii. 334.  
 Academies established in all new counties, iii. 440.  
 Tellico lands reserved from, iii. 441.  
 Military claims protected against, iii. 441.  
 Newton, proceedings of, legalized, iii. 441.  
 Academies, time of establishing schools at, extended, iii. 525.  
 Frankfort academy, amendatory act, iii. 1.  
 Acts concerning it amended, iii. 255.  
 Winchester, amendatory act, iii. 101.  
 Act for its benefit, iii. 474.  
 Woodford, act concerning, iii. 181.  
 Rittenhouse, may sell their lands, iii. 244.  
 New-Athens, act concerning, iii. 302.  
 Newton and Logan, act concerning, iii. 409.  
 Montgomery, act concerning, iii. 433.  
 Act for its benefit, iii. 474.  
 Bourbon, may sell their lands, iii. 468.  
 Jefferson, act respecting, iii. 489.  
 Transylvania, established, (P) iii. 571.  
 Salem, incorporated, (P) iii. 579.  
 Academies established in Lewis and Clay counties, iv. 17.  
 Academy established in Barren county, iv. 85.  
 Greenville incorporated, iv. 113.  
 Liberty incorporated, iv. 114.  
 Rockcastle incorporated, iv. 114.

Woodford, act for benefit of, iv. 123.  
 Academy established in Greenup county, iv. 127.  
 Academies, Shelby and Bethel may sell their lands, iv. 151.  
 Lebanon academy established, iv. 193.  
 Academy in Barren county, amendatory act, iv. 219.  
 Woodford, may sell part of their ground, iv. 232.  
 Montgomery, act concerning, iv. 243.  
 Academies of Knox, Boone, Clay and Estill further time to appropriate their lands, iv. 251.  
 Kentucky Seminary, trustees appointed to, iv. 319.  
 Academies may sell their lands under the direction of circuit courts, iv. 352.  
 Further time to locate their lands, iv. 377.  
 Shall pay settlers on, for their improvements, iv. 378.  
 Settlers protected against locations of, iv. 379.

## ACCESSORIES.

Accessories to felonies, where to be tried, i. 472.  
 Accessories to persons giving dangerous wounds, to be apprehended, ii. 71.  
 When punishable before principals, iii. 68.

## ACCOUNT, ACTION OF.

Capias may issue in action of account, (E) ii. 513.  
 Exigent may issue in, (E) ii. 513.  
 Outlawry in, (E) ii. 513.

## ACRE.

How many perches shall make an acre (E) ii. 572-3.  
 Of land may be condemned for a mill, i. 608.

## ACTIONS.

Special, given against officers for unreasonable seizures, i. 545.  
 Penal, limitation of, i. 475.  
 Civil, limitation of, i. 380, &c.  
 Qui tam, limitation of, (E) ii. 533.  
 Certain not to lie (statute of frauds) i. 372.  
 Joint, against heirs and devisees, ii. 508.

## [ACT]

## INDEX.

## [ADQ]

Joint, against heirs and personal representatives, i. 128.  
 Joint, against justices for a fine, i. 475.  
 True species of action to be endorsed on writs, i. 393, 492.  
 Actions popular, collusive prosecution of, ii. 41.  
 Of debt against sheriffs for escapes, ii. 34.  
 Of waste, who liable to, ii. 50.  
 Actions, location of, (*E*) ii. 515.  
 Actions personal, (*E & V*) ii. 513 to 519.  
 Actions real, (*E*) ii. 508 to 512.  
 Actions by persons held in slavery, limitation of, iii. 484.  
 Action given against prison breakers, iii. 59.  
 Against those aiding the escape of debtors, iii. 59.  
 Against landholders settled, limitation of, iv. 56.  
 Against those thereafter settling, do. iv. 56.  
 Actions at law, general act concerning, iv. 175.  
 When to be tried, iv. 177.  
 Actions at law, how to be proceeded in, iv. 259.  
 Actions local, writs in, may issue to any county, iv. 383.  
 Actions personal, against a plurality of defendants, iv. 384.  
 Actions against joint obligors, i. 510, iv. 384.  
 Actions, survivor of, i. 489, ii. 441, iv. 384.

## ACTS OF ASSEMBLY.

Private acts may be given in evidence, i. 500.  
 When certain acts shall commence, i. 508 and 672.  
 Acts to commence from their passage, (*V*) i. 385.  
 To commence from the 10th of March, (*E*) i. 385.  
 Questions respecting repeal of, how determined, (*V*) i. 385.  
 When to be in force, ii. 208.  
 To be in force from their passage, iv. 136.  
 Omission in a former act supplied, i. 672.  
 Governor to distribute copies of, i. 681.

## ADAIR COUNTY.

Formed, ii. 429.  
 Part of it added to Wayne, iii. 112.

## ADDITIONS.

What additions necessary in indictments, i. 473.  
 Additions to towns, how to be made, i. 514.

## ADJOURNMENT TO THE GENERAL COURT, iii. 43, 90.

ADJUSTMENT OF LAND CLAIMS,  
Act for, iv. 55.

## ADJUTANT-GENERAL.

State to pay postage on communications to, iv. 134.  
 Fine on, for failing to perform his duty, iv. 310.

## ADMEASUREMENT OF DOWER.

Writ of, may be sued by guardians, (*E*) ii. 509.

## ADMINISTRATION.

County courts to have cognizance of, i. 93, 374.  
 When to be granted and to whom, i. 615, 618.

## ADMINISTRATORS.

May procure the appointment of commissioners for conveying land, i. 148, 180.  
 Their powers and duties, generally, i. 615, 625.  
 Law of costs as to, not then altered, i. 489.  
 Administrators with the will annexed, i. 615, ii. 534 (*E*), iv. 204.  
 Provision where their bonds have been destroyed, iii. 156.  
 Not to be sued within six months, iv. 269.  
 When and how not to confess judgment, iv. 270.  
 Liable only for amount of assets, iv. 269.  
 Non-resident, may prosecute suits, iv. 338.  
 How far liable on appeal bonds, iv. 388.

## AD QUOD DAMNUM.

Writ of, on application for mills, i. 606.  
 On application for roads, i. 633.  
 On application of owners of saltlicks, ii. 433.

ADVANCEMENT of children, i. 559.

ADVANTAGES of new roads to be reported, i. 633.

#### ADVERTISEMENTS.

Advertisement of proclamation in suits at law, i. 308, 498.

In chancery, i. 316, 593, &c. iii. 108.

In writs of right, ii. 3, 4.

Advertisement on bills to perpetuate testimony, i. 525.

On taking depositions, ii. 100.

On revival of suits in chancery, ii. 404.

Against officers by their securities, ii. 296.

Of strays, ii. 79.

Of goods taken in execution, i. 139, 543.

Of lands taken in execution, ii. 129.

Advertisements may be printed in the Kentucky Herald, i. 695.

In the Mirror, Palladium, Guardian of Freedom and Kentucky Telegraph, ii. 228.

Advertisement of petitions to the legislature, ii. 375.

Of elections, ii. 339.

Of lands under the revenue laws, ii. 462.

Of runaways, ii. 5.

Of houses where the small-pox is, ii. 48.

On applications for divorce, iv. 19.

Advertisements may be printed in the Western American, Independent Gazetteer, and Weekly Messenger, iii. 161.

May be printed in the Republican Register and Mirror, at Danville, iii. 192.

May be printed in the Informant, iii. 301.

In the Western World and Republican Auxiliary, iii. 328.

In the Mirror, at Russellville, iii. 333.

In the Impartial Review, iii. 343.

In the Lamp, iii. 437.

In the Argus, iii. 465.

In the Louisville Gazette, Reporter and Western Citizen, iii. 530.

In the Political Theatre, Dove, and Farmer's Friend, iv. 53.

In the Globe, iv. 84.

In the Examiner, iv. 126.

In the American Republic and Luminary, iv. 263.

In the American Statesman, Western Cou-

rier, Bardstown Repository, and the Telegraph, iv. 316.

#### ADVICE.

To be given by attorney-general to auditor, i. 60.

To register, ii. 274.

Following, to indemnify the register, ii. 274.

#### ADULTERY.

Punishment of adultery, ii. 479.

Charge of, slander, iv. 385.

Ground for divorce, iv. 19.

ADULTRESS forfeits her dower, i. 518.

#### AFFIDAVIT.

Affidavit by defendant in execution that he hath land in another county, i. 129.

By plaintiff on statutory bond that it is unpaid, i. 137.

On petitions for impeachment, i. 132.

What required on filing a caveat, i. 501.

Affidavit of service of subpoena in chancery, i. 522.

To an answer in chancery, i. 522, ii. 370.

To an injunction bill, i. 527, ii. 221, 370.

To obtain a *ne exeat*, i. 527.

On bill to perpetuate testimony, i. 525.

To plea in abatement, i. 308, 498.

To plea of *non est factum*, i. 308, 498.

To hold to bail, i. 493.

In support of bills of exceptions, ii. 402.

On injunctions, may be read on hearing, ii. 295.

To denial of sheriff's receipt for fee bills, (N) ii. 526.

On obtaining an attachment, i. 96, iii. 239.

To plea denying a note, ii. 440.

To plea denying an assignment, iv. 385.

To petition for change of venue, iii. 152.

#### AGENTS.

Agent, when notice to be given to, on taking depositions, i. 526.

Agents to be appointed by owners of entries for land, i. 454.

When notices for injunctions may be given to, ii. 224.



## [AGE]

## INDEX.

## [ANS

Agent of the penitentiary to be appointed, iii. 76.  
 His duty, iii. 76.  
 To open and keep an account, iii. 72.  
 Not to be subject to the keeper, iii. 299.  
 May appoint agents, iii. 401.  
 His salary, iii. 401.  
 May employ a supercargo, iv. 76.  
 To keep a general and special account, iv. 149.  
 His duty in collecting debts, iv. 149.  
 In transporting manufactures, iv. 150.  
 Agents may be employed by the auditor, iv. 70.  
 Their compensation, iv. 71.  
 Agent may be appointed to attend the Indian treaty, iv. 108.

## ALIAS.

Alias to issue without order of court, i. 482, iv. 175.  
 On what return it may issue, i. 496.  
 In local actions, iv. 383.  
 May issue in case of defendant's removal, iv. 383.

## ALIENAGE.

Alienage no bar to descent, i. 559.

## ALIENATION.

Alienation of land by heirs and devisees, i. 599.  
 Alienations, (*E*) ii. 498, &c.  
 Alienations, wrongful, ii. 39.

## ALIENEES OF DISSEISORS.

Answerable for damage done in their time, (*E*) ii. 508.

## ALIENS.

Aliens shall be subject to all the laws, (*E*) ii. 571.  
 Who shall be deemed aliens, (*V*) ii. 581.  
 Aliens permitted to hold lands, ii. 399.

## ALIMONY.

In what cases allowed, ii. 409.

Mode of proceeding for, ii. 410.  
 Allowed wives of convicts, iii. 74.  
 Allowed wives abandoned by their husbands, iv. 407.

## ALLEGATIONS.

Consideration of an assignment of a bond, &c. need not be alleged in the declaration, iv. 388.  
 Want of certain allegations not error, i. 499.

## ALLEGIANCE.

Oath of allegiance to be taken by settlers, (*V*) i. 425.

## ALLOWANCES TO WITNESSES.

To have the force of fee-bills, iv. 251.

## AMENDMENTS.

Various statutes respecting amendments, (*E* & *V*) i. 486, 487, &c.  
 Amendment of bills in chancery, i. 313, 521.  
 Amendments in chancery, rules respecting, iii. 20.  
 Amendments of forthcoming and replevin bonds, iii. 92.  
 Amendments generally, when to be made, iv. 178.  
 Amended bill, subpoena-unnecessary on, iv. 180.  
 Amendment of defective pleadings, iv. 260.

## AMENDS.

Where tender of, may be made, i. 489.

AMERICAN REPUBLIC, advertisements in, iv. 203.

AMERICAN STATESMAN, advertisements in, iv. 316.

## AMERCIAMENTS.

Power of, to be in the judges only, i. 474.  
 How to be proportioned and assessed, i. 474.

## ANSWER IN CHANCERY.

When to be filed, i. 312, 521, iv. 172.

Before whom to be sworn to, i. 522.  
 Insufficient, i. 313, 523.  
 After plea or demurrer overruled, i. 314.  
 524, iv. 179.  
 In nature of a cross bill, i. 522.  
 When to be laid before a jury, i. 526.

## APPAREL.

Of insolvent debtors, protected, i. 144, 549.

## APPEALS TO THE COURT OF APPEALS.

When to be taken, i. 106, 563.  
 In what cases not allowed, i. 106, 562.  
 On what conditions to be had, i. 106, 563.  
 Not to lie in caveats, i. 501.  
 In cases of ferries, i. 361.  
 When records of to be lodged, ii. 226, 310, 412.  
 Non suit in, ii. 226.  
 Attorney general to take, ii. 226.  
 Prohibited in certain cases, ii. 443.  
 Not to lie on judgments confessed, ii. 336.  
 Allowed in ferry cases on fact and law, ii. 219.  
 Appeals regulated, iii. 178.  
 Not allowed on convictions of riots, &c. iii. 241.  
 Not allowed on dissolution of injunctions, iii. 498.  
 May be taken in caveats, iv. 81, 284.

## APPEALS FROM MAGISTRATES.

Appeals from justices to quarter session courts, i. 92.  
 To county courts, i. 157, 377.  
 Where not allowed, ii. 465.  
 Plaintiff may appeal, ii. 411.  
 Appeals allowed to the circuit court, iv. 343.

## APPEARANCE.

Where sheriff may take an attorney's engagement for defendant's appearance, i. 491.  
 Appearance, bail for, i. 303.  
 Not required, i. 492, &c. iv. 176.  
 Appearance of infant by attorney, when not error, i. 499.  
 Appearance in chancery, what shall be tantamount to, i. 522.

## APPRAISEMENT.

Appraisement of decedents' estates, i. 620.  
 Of strays, ii. 78.  
 Death of widow before, ii. 576.

## APPRENTICES.

County courts to have jurisdiction over, i. 375.  
 To hear their complaints, i. 375.  
 Poor orphans to be bound apprentices, i. 192, 677.

APPREHENSION of fugitives from justice, provision for, iii. 108, 300.

APPROVERS, never to be admitted, i. 475.

## ARBITRATIONS.

Act concerning arbitrations [repealed in 1798] i. 327.  
 Guardians may submit the land claims of infants to, i. 677.  
 Arbitrations, act respecting, ii. 72.  
 Former laws repealed, ii. 75.

## ARMS.

Of insolvent debtors protected, i. 549.  
 Appropriation for procurement of, iv. 169.

ARRAY, challenge of, i. 469.

## ARREARAGES.

Arrearages to be collected by sheriffs out of office, i. 248.  
 Of quit rents on the western waters, not demandable, (V) i. 392.  
 Of rent, who may distrain for, (V) ii. 502.  
 Recoverable in an action of debt, (V) ii. 506.  
 Of public money, collection to be coerced, iv. 70.

For arrearages of taxes, see the revenue laws.  
 To be collected by the new sheriffs, i. 84, 584.

## ARREST OF JUDGMENT IN CIVIL CASES.

Cases for which judgments shall not be arrested or reversed, i. 499, ii. 311.

## ARR]

## INDEX.

## [ATT

When arrested, plaintiff need not bring a new  
suit, ii. 404.

ARREST OF JUDGMENT IN PENAL  
ACTIONS.

For what causes judgments shall not be ar-  
rested or reversed, i. 465 (V) 473.

ARREST OF JUDGMENT IN CRI-  
MINAL PROSECUTIONS.

Causes for which judgments shall not be ar-  
rested, i. 473, iii. 293.

## ARREST OF PERSONS.

Arresting ministers of religion, punishment  
for, ii. 479.

No person to be arrested on Sunday, on civil  
process, except escape warrants, i. 84, 584.

Witnesses not to be arrested on civil process,  
i. 584, ii. 97.

Persons attending musters and elections not  
to be arrested on civil process, except for  
escape, i. 584.

Where defendant need not be arrested, ii.  
402.

Arrest in criminal prosecutions, iii. 291.

## ARSON.

Punishment of, ii. 11.

Of court-houses and prisons, ii. 470.

Of tobacco houses, ii. 470.

Of penitentiary house, iii. 402.

ASSAULT AND BATTERY, ACTION  
FOR.

How bail may be obtained in, i. 493.

When plaintiff shall recover no costs, and  
when no more costs than damages, [repeal-  
ed] i. 489.

Full costs allowed, ii. 403.

ASSAULT WITH INTENT TO ROB.  
Punishment, iii. 68.

## ASSEMBLY, GENERAL.

Commencement of their sessions altered, i.  
673.

Their powers and privileges, i. 292.

Commencement of their sessions altered, i.  
44.

Time of their meeting changed, iii. 399.

Wages of members of, raised, iii. 404.

Commencement of their sessions altered, iii.  
473.

Commencement of their sessions altered, iv.  
44.

Expulsion of the members of, iv. 186.

## ASSEMBLIES, UNLAWFUL.

How punished, ii. 478 [repealed] iii. 55.

Common law against, revived, iv. 80.

## ASSETS.

Estates *par autre vie* made assets, i. 624.

Slaves, in what cases assets, i. 621, ii. 121.

Executors and administrators not liable be-  
yond assets, iv. 269.

## ASSIGNMENTS.

Assignment of platts and certificates allowed,  
(V) i. 415.

Of land warrants, (V) i. 415.

Of bonds taken on sheriff's sale of land, i.  
131.

All writings made assignable, [repealed in  
1798] i. 509.

Of platts and certificates by commissioners,  
i. 280, 690.

Of bonds and notes, allowed, ii. 75.

Certain acts respecting, repealed, ii. 75.

Assignment of dower, iii. 133.

Assignment on bonds, &c. plea denying to be  
on oath, iv. 385.

Consideration of, need not be alleged, iv. 388.

## ASSURANCE COMPANY, MUTUAL.

Act establishing it, iv. 253.

Amendatory act, iv. 375.

ATTACHMENTS ISSUING FROM  
COURT.

## AT COMMON LAW.

On what return plaintiff may have an attach-  
ment, i. 306, 496, ii. 402.

Proceedings thereon, i. 307, 496.

Bail may have an attachment, i. 494.  
 Attachments for contempts, iv. 386.  
 Attachments with proclamation, when to  
 issue, i. 308, 458.  
 Proceedings on, i. 308, 498.

## IN CHANCERY.

Attachment for costs, i. 521.  
 To compel an appearance, i. 522.  
 To compel answer, i. 522.  
 Attachment with proclamation, i. 522.  
 Attachments, when not necessary, ii. 294.  
 Against the goods, &c. of absent defendants,  
 i. 593, &c.

ATTACHMENTS issuing from magis-  
 trates, i. 93, 96, 595, iii. 239.

May be executed by constables in all cases,  
 iii. 131.

Attachment for rent, ii. 505 (V).

ATTAINT OF FELONY, to cause no  
 forfeiture, i. 474.

ATTORNNMENTS, not necessary, i. 575.

## ATTORNEY, POWERS OF.

Certain, void, i. 491.  
 How to be acknowledged and recorded, i.  
 153, 570.  
 Foreign, how to be authenticated, ii. 76.  
 By non-resident *femes covert*, iv. 363.

## ATTORNEY-GENERAL.

To attend the legislature [repealed] i. 116.  
 To give advice to the auditor, i. 60.  
 His duty and salary, ii. 77.  
 To give advice to the register, ii. 274.  
 To take appeals, &c. on mandamuses, ii. 226.  
 His duty under the circuit court system, iii.  
 85.

ATTORNIES FOR THE COMMON-  
WEALTH.

How to be paid, i. 203.  
 Their duties in cases of incestuous marriages,  
 ii. 68.  
 Act making provision for, iii. 146.

Continued, iii. 238.

Do. iii. 318.

Do. iii. 404.

To oppose divorces, iv. 20.

Their compensation, iv. 227.

Do. iv. 420.

Where no fee is to be taxed for, iii. 353.

## ATTORNIES AT LAW.

How to be licensed, i. 365.

How punishable for malfeasance, (V) i. 364.

Notice of taking depositions may be given to,  
 i. 526.

Penalty on, for appearing under certain pow-  
 ers, i. 491.

For not appearing, having engaged to, i. 492.

From Tennessee and N. W. territory, not to  
 practice here, ii. 40.

Notice of injunction may be given to, ii. 222.

Liable to their clients, on motion, ii. 441.

Various acts respecting, (E. & V.) ii. 537,  
 540, 584.

Fees of attorneys in the supreme court, (V.)  
 ii. 540.

In district courts, i. 376.

To be taxed in all judgments, i. 311.

In circuit courts, iii. 85.

How far and how amenable to their clients,  
 iii. 215.

Clerks and justices not to practice as, in their  
 courts, iii. 304.

From Indiana, prohibited, iii. 508.

From Ohio, prohibited, iv. 59.

May be employed by the auditor, iv. 70.

## AVERMENTS.

Want of certain averments not error, R. 499,  
 ii. 311, iv. 260, 388.

AUCTIONS, prohibited and punished, (V)  
 ii. 563.

AUDITED WARRANTS, to be received  
 for payment of land, ii. 428.

## AUDITA QUERELA.

Quarter session judges may award writs of  
 audita querela, i. 157.

## AUDITOR.

To be appointed, i. 59.  
 His duty, i. 59, 264, &c.  
 His duty at large, ii. 131.  
 How to proceed against delinquent sheriffs, &c. ii. 63.  
 His office, act concerning, iii. 220.  
 His duty relative to the public debt, iii. 479, &c.  
 Not to purchase lands for, iii. 481.  
 Act concerning his office, iv. 66.  
 His duty respecting public debtors, iv. 70.  
 May employ agents and attorneys, iv. 70.  
 State to pay postage on his communications, iv. 134, &c.  
 May correct mistakes in certificates, iv. 367.  
*Vide* also the revenue acts and the acts respecting vacant and Green river lands and public debt, *passim*.

## AUGUSTA.

Town of, regulated, ii. 429.  
 Act concerning, iii. 348.  
 Do. do. iv. 7.  
 Repealing act concerning, iv. 157.

## AUTHENTICATION.

How foreign records and recorded papers are to be authenticated, ii. 76.  
 Of depositions, what sufficient, iii. 524.  
 Of wills, i. 614.

## AUTHORITY.

English cases since 1776, not to be read in our courts, iii. 457.

## AWARDS.

The law at large respecting, ii. 72 to 75.

## BAIL IN CIVIL CASES.

## APPEARANCE.

Where demandable of course, i. 303, 492.  
 Where not demandable of course, i. 304, 493.  
 How obtained where not demandable of course, i. 493, iii. 87.  
 In actions of detinue, change of bail piece, i. 493.

## VOL. IV.

Appearance bail no longer demandable, iv. 176.

## SPECIAL BAIL.

Special bail may be required in all personal actions on defendant's appearance (*V*) i. 481, iv. 176.  
 Form of recognizance of special bail, i. 482 (*V*) iv. 176.  
 Who may take it, i. 305, 494, iii. 87, iv. 387.  
 Exceptions to, i. 305, 494, iv. 176.  
 How special bail may be discharged, i. 306, 495.  
 When and where to surrender their principal, i. 306, 495.  
 Where not demandable, i. 475.  
 To be given on contesting judgment, ii. 336.  
 When requirable of masters of vessels, ii. 161.  
 Special bail may be taken by sheriffs, &c. iv. 176.  
 Not discharged though adjudged insufficient, iv. 176.  
 Bail in suits before magistrates, iv. 342.  
 Bail may be taken by jailors, iv. 38.  
 Failing to take bail subjects the officer to judgment, iv. 387.

## BAIL IN CRIMINAL PROSECUTIONS, i. 467, iii. 291.

Owners of slaves prosecuted may bail them, ii. 418.  
 Bail in criminal prosecutions may be taken by justices of the peace, iii. 242, iv. 67.  
 Allowing or denying bail in violation of law, punishable, (*V*) ii. 568.  
 Form of recognizance of bail in criminal cases, iv. 69.  
 Bail to be taken on arrest for contempts, iv. 385.

## BAIRDSTOWN.

Established, (*V*) iii. 566.  
 Time for improving lots in, prolonged, i. 87.  
 Shooting and racing in, prohibited, i. 221.  
 Time for improving in, prolonged, i. 240, 384.  
 Better regulated, ii. 53.  
 Acts concerning it, iii. 9, 165, 254.  
 Trustees of, may make additional by-laws, iii. 469.

Road from Buckley's ferry to, iii. 463, 535.  
Bardtown Repository, advertisements in, iv.  
316.

BAKERS, for what and how punishable,  
(V) ii. 569.

BALLAST, unloading of, (V) ii. 567.

#### BANK.

Bank bills, private, not to issue, (V) ii. 565.  
Bank of Insurance Company established, iii.  
25.  
Restricted, iii. 213. \*  
State Bank established, iii. 390.  
To certify the state's dividend to the auditor,  
iii. 452.  
To pay auditor's warrants, iii. 528.  
Duty of treasurer respecting, iii. 452, 528.  
President to certify to auditor, &c. iv. 34.  
Private banking associations suppressed, iv.  
399.

#### BAR.

Jointure shall bar dower, i. 518.  
Adultery do. i. 518.  
Alienage shall not bar descent, i. 559.  
Collusive recoveries in actions popular, shall  
be no bar, ii. 41.  
Bar in alienations with warranty, ii. 39.  
Disseisors dying seized shall not bar entry, ii.  
90.  
Alienations by husbands of wives' land, shall  
not bar the wives, ii. 90.

BARBOURSVILLE, town of, act regula-  
ting, iv. 319.

#### BARGAINS AND SALES.

Enrolment of, (E) ii. 496.  
Deeds of, their operation, i. 572.

#### BARREN COUNTY.

Formed, ii. 222.  
Election precinct established in, iii. 103.  
Additional justices in, iii. 82, 186, 529.  
Academy established in, iv. 85.  
Amendatory act respecting academy in, iv.  
219.

BARREN RIVER, its navigation, iv. 198.

#### BARRELS.

Contents of, (E) ii. 574.  
What shall be a sufficient hoops of, iv. 167.

#### BASTARDY.

The law in detail respecting, i. 282, 283,  
284.  
Bastards may inherit on part of their mo-  
thers, i. 559.  
Punishment for concealing the death of, ii.  
467.

BATH COUNTY, formed, iv. 215.

BEALSBOROUGH, town of, established,  
(V) iii. 564.

#### BEASTS.

Beasts trespassing, when they may lawfully  
be killed, ii. 27.  
When they shall not be hurt, ii. 28.  
Beasts distrained and impounded, to be fed by  
the owners, (E) ii. 500.  
Not to be driven out of the county, (E) ii.  
501.

#### BEECH FORK.

Mills may be built on, iii. 80.  
Navigation of, to be kept open, iii. 314.

#### BEEF AND PORK.

Inspections of, iii. 237, 321, 329.  
Inspections of beef and pork abolished to a  
certain extent, iii. 329.

BEER, impure, punishment for making, ii.  
553. (E) 569 (V).

BEHAVIOUR, good, who shall be bound  
to, and by whom, i. 466 (V) ii. 565 (V).

#### BENEFIT OF CLERGY.

Abolished as to free persons, ii. 14.  
Slaves allowed it, ii. 117.

BEQUEST OF SLAVES, ii. 120, 121.

## [BET]

## INDEX.

## [BON]

## BETS.

Money and property bet, to be forfeited, ii. 284-5.

## BETHEL ACADEMY.

Established and incorporated, ii. 174.  
Trustees of, may sell their lands, iv. 151.  
Trustees of, incorporated, iv. 152.

BIG BARREN RIVER, its navigation, iv. 198.

## BIG SANDY.

Road to, iii. 4, 166, 350.  
Turnpike, iv. 154.

## BIGAMY.

Punished by fine and imprisonment, ii. 36.  
By confinement in the penitentiary, ii. 468.

## BILLS OF EXCHANGE.

Ten per cent. given on, i. 178, ii. 101, 103.  
General act respecting, ii. 101.

BILLS, SINGLE, to bear interest, ii. 281.

## BILLS IN CHANCERY.

Various regulations respecting, i. 312, 521, &c.  
To be filed before subpoena issues, iii. 498.  
Amended subpoena on, unnecessary, iv. 180.

## BILLS OF EXCEPTIONS.

When a bill of exceptions may be signed by by-standers, i. 203, ii. 402.  
In what cases they may be taken, ii. 31.

BILLIARD TABLES, tax on, &c. ii. 56, iii. 176.

BLUE LICKS, to be enclosed, (see salt-works) ii. 188.

## BOATS.

May be impressed by sheriffs, i. 467.  
Stray, ii. 77.

BOATMEN, act respecting, i. 262.

## BODIES:

Dead, to be examined by coroner, ii. 71.  
Penalty on masters of vessels for not burying, (V) ii. 567.

## BONDS, COMMON.

Proceeding at law on certain bonds, i. 490.  
Judgment on, i. 491.  
Bonds filed in one court and sued on in another, i. 303.  
Bonds made assignable, i. 509, ii. 75.  
Bonds for conveyance of land, specific remedy on, i. 690.  
Consideration of bonds impeachable by plea, ii. 442.  
Usurious bonds void, ii. 45.  
Gaming bonds void, ii. 103.  
Penal bonds in courts abroad, (E) ii. 515.  
Plea denying assignment of, to be on oath, iv. 385.  
Bonds, joint, i. 506, 510, iv. 384.  
Bonds assigned, consideration of assignment need not be set forth, iv. 388.

## BONDS, STATUTORY.

Replevin, i. 140, 270, 545, 546, ii. 334, iv. 264.  
Replevy (*Virginia 12 months*) proceedings on, i. 190.  
Forthcoming, i. 139, 207, 270, 311, 671.  
For prison bounds, i. 142, 547, iv. 387.  
For costs, i. 205, 491, ii. 440.  
Appeal, i. 106, 562, iv. 388.  
Superfideas, i. 107, 564, iv. 367, 388.  
For prison fees, i. 144, 551.  
By plaintiff in attachment, i. 93, 596.  
Injunction, i. 527, ii. 221.  
From purchasers of lands under execution, i. 130, 670, ii. 334, iv. 264.  
By defendant in attachment, i. 596.  
Appearance bail bonds, i. 304, 493.  
By successful claimants, i. 643.  
On appeals from magistrates, i. 92, 377, iv. 343.  
Bonds to be given by vagrants, i. 289.  
By emancipators of slaves, i. 247.  
By proprietors of towns, i. 514.

Forthcoming, taken by constables, ii. 36, iii.

129.

Ne exeat, i. 527, ii. 485.

On replevying goods distrained for rent, ii. 507 (V).

Replevin and forthcoming, writs of error to the court of appeals not to lie on, iii. 92.

May be amended or quashed in courts below, iii. 92.

Replevin, taken by constables, iii. 127.

By purchasers of free negroes, iii. 500.

In forcible entry and detainer, iv. 184.

Bonds of tavern keepers, i. 194.

Of ferrymen, i. 362.

Of executors, i. 615.

Of administrators with the will annexed, i. 615.

Of administrators generally, i. 619.

Of guardians, i. 674, iv. 125.

Of sheriffs, i. 82, 580, ii. 323.

Of constables, i. 145, ii. 35, iii. 127, iv. 344.

Of the clerk of the court of appeals, i. 103, 561.

Of the treasurer, i. 78, ii. 133.

Of the district jailor, i. 317.

Of the register, i. 75, 368.

Of collectors, i. 681.

Of surveyors, i. 386 (V) iii. 405.

Of county court clerks, ii. 84.

Of coroners, ii. 69.

Of escheators, ii. 29.

Of notaries public, ii. 43.

Of sheriffs, for collection, ii. 323.

Of owners of warehouses, ii. 142.

Of inspectors, ii. 144.

Of the keeper of the turnpike, ii. 266, iii. 52, 283.

Of circuit court clerks, iii. 85, 185.

Of inspectors of cotton, iii. 20.

Of commissioners of the turnpike, iii. 211, 284.

Officers' bonds to the commonwealth instead of to the governor, iv. 123.

State officers to give bonds, iv. 124.

County officers to give bonds, iv. 124.

Force of such bonds, iv. 125, 126.

Penalty for failing to give, iv. 125.

Recovery on, not to be limited by the penalty, iv. 123, 212.

Bonds of jailors, iv. 387.

## BOOKS OF ENTRIES.

Act respecting, ii. 302.

Of the Virginia land commissioners, ii. 305.

## BOONE COUNTY.

Formed (See index to the appendix to this volume.)

Election precinct in, iii. 487.

Academy in, further time to locate its lands, iv. 251.

## BOONESBOROUGH.

Established, (V) iii. 538.

Amendatory act concerning, (V) iii. 539.

Ferry established at, (V) iii. 585.

Inspection established at, (V) iii. 582.

Trustees of, to convey a lot, i. 221.

Time of building in, prolonged, i. 341.

BOUNDARIES OF LAND, perpetuating evidence of, i. 554.

BOUNDARIES OF THE STATE, i. 626.

Eastern, ii. 276.

Southern, ii. 434, iii. 80, iv. 388.

BOUNDARIES OF VIRGINIA, (V).

i. 390, 463.

BOUNDARY OF MILITARY LANDS,

(V) i. 411, 432.

BOUNDARY, INDIAN, head right claims in, void, iii. 308.

## BOUNDARIES.

Of fundry counties, i. 626.

Of counties on Ohio, defined, iv. 148.

BOUNDS, PRISON, privilege of, restricted, iv. 101.

## BOURBON COUNTY.

Boundaries of, i. 627.

Academy established in, ii. 237.

Academy in, incorporated, ii. 242.

Additional justices in, iii. 308, 529.



Time of holding courts in, altered, iv. 2351

**BOWLING-GREEN**, town of, act respecting, iv. 319.

#### BRACKEN COUNTY.

Formed, i. 366.

Academy in, incorporated, ii. 242.

Seat of justice in, ii. 367.

Additional justices in, iii. 343.

Elections, where to be held in, iv. 241.

**BRANDS**, altering or defacing, how punished, ii. 480.

**BRASHEARS'S CREEK**, not to be considered a navigable stream, iv. 6.

#### BREACHES OF THE PEACE.

How punished, iii. 55.

Common law against, revived, iv. 80.

**BREACHES OF PENAL LAWS**, to be presented, i. 470.

**BREACHES OF CONDITIONS OF BONDS**, to be assigned, i. 490.

**POUND BREACH**, treble damages for, (V) ii. 504.

**BREAD**, selling unwholesome, how punished, (V) ii. 569.

**BREAKING** and robbing warehouses and storehouses, ii. 471, iii. 63, 64.

**BREAKING** prison, actions for, iii. 59.

#### BRECKENRIDGE COUNTY.

Formed, ii. 271.

Act establishing it amended, ii. 413.

Additional justices in, iii. 343.

Election precinct in, iv. 327.

**BREWERS**, (V) ii. 569.

#### BRIBERY.

In sheriffs, (E) ii. 545.

In other persons, ii. 476, iii. 68.

#### BRIDGE, FRANKFORT.

Company incorporated, ii. 303.

John Pope authorized to build one, iii. 280.

Thomas Tunstall do. iii. 306.

John Brown do. iii. 311.

Bridge may be erected across North Elkhorn, iv. 87.

Do. across South Licking, iv. 97.

Bridge company, Frankfort, incorporated, iv. 137.

Amendatory act concerning, iv. 324.

John Brown authorized to build a bridge near his ferry, iv. 350.

**BRITISH SUBJECTS**, their conveyances void, (V) i. 436.

**BUCKLEY'S FERRY**, road from, to Bairdstown, iii. 463, 535.

**BUILDINGS, PUBLIC**, in Frankfort, their preservation, iv. 276.

#### BULLITT COUNTY.

Formed, i. 364.

Academy in, incorporated, ii. 243.

Additional justices in, iii. 308.

Part of Jefferson added to, iv. 219.

#### BURGLARY.

How punished, ii. 12.

Indictment for, good without naming the owner, iii. 69.

**BURKSVILLE**, town of, act regulating, iv. 319.

**BURIAL OF DEAD BODIES**, ii. 71, 567.

#### BURNING HOUSES, ii. 11.

Court houses and prisons, ii. 470.

Tobacco houses, ii. 470.

Penitentiary house, iii. 402.

**BURNING OF REFUSED TOBACCO**, forbidden, iii. 526.

## [BUS]

## INDEX.

## [CER]

BUSHEL, contents of, ii. 573-4 (E) 194.

BUTLER COUNTY, formed, iv. 110.

BUTTS, contents of, (E) ii. 574.

## BUYING OFFICES.

Prohibited, (E) i. 578-9.

How punished, ii. 477.

BUYING PRETENSED TITLES, prohibited, (V) ii. 569.

## CABLES.

Deceitful making of cables punishable, (E) ii. 551.

## CALDWELL COUNTY.

Formed, iv. 22.

Authorized to procure seminary lands, iv. 66.

Election precincts formed in, iv. 201, 327.

CAMPBELL COUNTY, boundaries of, i. 652.

CAMPBELL-TOWN, established, (V) iii. 554.

CANAL, Ohio, act concerning, iii. 221.

CANDIDATES, when to resign the offices they hold, ii. 396.

## CAPIAS.

To issue in actions of account, (E) ii. 513.

In debt, detinue and replevin, (E) ii. 514.

## CAPIAS AD SATISFACIENDUM.

Form of, i. 535.

CARTWRIGHT'S CREEK, inspection at, (V) ii. 583.

CASE, ACTION ON, how bail may be obtained in, i. 495.

## CASEY COUNTY.

Formed, iii. 325.

Act concerning, iii. 414.

Part of it added to Lincoln, iii. 470.

Election precinct established in, iv. 224.

CASKS, how to be made and marked, i. 331.

CASU CONSIMILI, writ in, (E) ii. 510.

## CATTLE.

Infected, (V) ii. 565.

Stray, ii. 77, &c.

Trespassing, ii. 27.

## CAVEATS.

## UNDER THE LAW OF VIRGINIA.

Proceedings in caveats, i. 159, 501.

Caveats depending at the revolution, i. 406.

Against the proceedings of the commissioners, i. 404.

Causas for entering, i. 412.

Lift of, to be returned to the deputy register, i. 441.

## ON CLAIMS DERIVED FROM KENTUCKY.

Appeals and writs of error to lie on, iv. 81, 284.

Patent not to issue while caveat is pending, iv. 283.

Second caveat not to be entered, iv. 283.

Manner of preparing for trial, iv. 283.

When to stand for trial, iv. 284.

Appeal on, iv. 284.

CENTREVILLE, town of, act concerning, iii. 354.

## CERTIFICATES.

Of survey on importation rights, i. 393.

Of settlement rights, i. 402.

Of pre-emption rights, i. 401, 403.

Certificates and plats of survey, time to return them given by Kentucky, i. 115, 173, 235, 288, 697—ii. 185, 287, 374, 429—iii. 119, 168, 330, 525—iv. 228.

Certificates and plats of survey on entries made in Kentucky, when to be returned, iv. 230.

Certificates granted by Kentucky, where to be entered and surveyed, iv. 349.

Auditor may correct mistakes in, iv. 367.

Certificates for settlement under the Kentucky acts, i. 351, &c. 682, &c.—ii. 94, 273, 382, &c.—iii. 60, 79, 142, 151, 175, 196, 406—iv. 367.

Certain plats and certificates not to be received by the register, iv. 1.

Certificates, what required with surveys on Virginia land warrants, iv. 71.

Certificates, redemption of, ii. 338, 416.

Certificates of magistrates, what evidence of, iii. 524.

Certificates of notaries public to be evidence themselves, iv. 332.

CERTIORARI, act concerning, ii. 58.

CES QUE TRUST, estate of, subject to debts, dower and curtesy, i. 573.

CES QUE USE, estate of, subject to debts, dower and curtesy, i. 573.

#### CHALLENGE.

Of jurors by commonwealth's attorney, i. 469.

Peremptory, in criminal cases, i. 470, ii. 19, 236.

In civil suits, iii. 402.

Challenges to fight duels, ii. 285, iv. 382.

Challenging to fight about gambling, (*V*) ii. 558.

#### CHAMPERTY.

Acts against, (*E*) ii. 541, 546.

Laws against, repealed in part, ii. 230.

#### CHANCERY.

Proceedings in chancery in district courts, i. 312.

In quarter session courts, i. 203, 506.

In all courts of original equitable jurisdiction, i. 521 to 528.

Proceedings in, against absent defendants, i. 314, 593, iii. 108, iv. 180.

Complainant in, may make as many defendants as he pleases, though claiming under different rights, i. 521.

Injunctions in, restrictions on granting, ii. 221.

Bill in chancery to be filed before subpoena issues, ii. 294.

To be copied and delivered to defendant [*repealed*] ii. 294.

Attachment in, when not necessary, ii. 294.

Injunctions in, regulated, ii. 295.

Dedimus in, when not necessary, ii. 403.

Bill of revivor in, when not necessary, ii. 403.

Ne exeat, regulations respecting, ii. 404.

Amendments in chancery, iii. 20.

Bill in, may be filed against unknown heirs, iii. 19.

Courts of, may appoint commissioners to convey lands decreed to be conveyed, iii. 460.

When bill may be taken pro confesso, iii. 498.

Copy of bill need not be sent out, iii. 498.

No appeal or writ of error on dissolution of injunction, iii. 498.

Judge of the court of appeals may reinstate injunctions, iii. 498.

Chancery causes, where to be placed on the docket, iii. 502-3.

May be taken up and tried by consent, iii. 502.

Chancery causes to be docketed for the term, generally, iv. 34.

Process in chancery, when returnable, iv. 175.

Pleadings in chancery, iv. 178, 180.

Depositions in, iv. 179.

Attachments in, iv. 179.

Answers, exceptions, demurrers, &c. in, iv. 179.

Amended bill, no process necessary on, iv. 180.

Non suit in, iv. 180.

Replication in, dispensed with, iv. 260.

Divorces obtainable in chancery, iv. 19, 409.

Alimony do. ii. 409, iv. 407.

English acts respecting chancery proceedings, ii. 521, 522.

#### CHANGE OF VENUE.

Acts providing for, ii. 59, 437, iii. 7, 152, 289, iv. 349.

For what causes and how a circuit judge may award a change of venue, iii. 152.

Causes may be removed by consent, iii. 189.

Assistant judges may award a change of venue, iv. 349.

Reasonable notice required, iv. 350.

## [CHA]

## INDEX.

## [CIV]

Order need not be deposited 30 days before trial, iv. 330.

## CHARLESTOWN.

Established, (V) iii. 562.  
Longer time allowed to build in, (V) iii. 563.

CHEATING, with cards and dice, (V) ii. 558.

CHEROKEE INDIANS, their lands protected, iv. 229.

CHICKASAW INDIANS, their lands protected, iv. 229.

CHIEF JUSTICE, process not to run in his name, iv. 171.

CHILDREN, abandoned by their parents, iv. 408.

## CHRISTIAN COUNTY.

Boundaries of, i. 365.  
Surveyor of, to record certain plats and certificates, iii. 337.  
Election precincts formed in, iv. 224, 328.

## CIRCUIT COURTS.

Established, iii. 37, 184.  
Jurisdiction and rules of proceeding in, iii. 40, 85.  
To conform to the laws respecting quarter session and district courts, iii. 40.  
State laid off into districts for, iii. 504.  
Additional terms given to some, iv. 95, 131.

CITIZENSHIP, acts respecting, (V) ii. 580-1.

## CIVIL PROCEEDINGS.

In the district courts, i. 303, 478, ii. 127, 232.  
In courts of quarter sessions, i. 94, 157, 203, 506.  
In all courts of original jurisdiction, i. 488, &c.—ii. 402, 440—iii. 501—iv. 175, 259, 383.  
Proceedings on penal bonds, i. 490.

Against a defendant in custody, i. 495.  
Plea of payment to suits on bonds, i. 491.  
Plea in abatement and *non est* to be on oath, i. 498.  
Ejectments, plaintiff in, may declare in his own name, ii. 401.  
Plea in abatement, when not to be filed, ii. 402.  
When a defendant need not be arrested, ii. 402.  
Orders of survey may be directed to any body, ii. 403.  
Full costs given in trespass, assault, &c. ii. 403.  
Plaintiff need not bring a new suit when judgment is arrested, ii. 404.  
Unsealed writings, being the foundation of actions, not to be impeached without oath, ii. 440.  
Attornies liable to their clients on motion, ii. 441, iii. 216.  
Consideration of bonds impeachable by plea, ii. 442.  
*Scire facias*, proceedings in, ii. 442.  
No declaration necessary in, ii. 442.  
Writs made returnable to the first day, iv. 175.  
Declaration, when to be filed, iv. 175.  
Duty of officer in taking bail, iv. 175-6.  
When bail may be objected to, iv. 176.  
When suits at law are to stand for trial, iv. 177.  
Plea, when to be filed, iv. 177-8.  
Issues, how to be made up, iv. 177, 180.  
Amendments, special demurrer, &c. iv. 178, 260.  
Clerk to endorse the time of filing pleas, &c. iv. 180.  
Rules for pleading not required, iv. 181.  
Sheriff to endorse on process the time of his receiving and executing it, iv. 181.  
Formalities in declarations and pleas dispensed with, iv. 259.  
In local actions process may issue to any county, iv. 383.  
Provision where defendant removes, iv. 383.  
Personal actions against several defendants, provision for, iv. 384.  
What species of action shall not die with the person, iv. 384.  
Joint and several obligors, iv. 384.

Assignments on bonds not to be denied except on oath, iv. 385.

Unsealed instruments put on the same footing with sealed, iv. 385.

Slander, action of, may be brought on a charge of fornication or adultery, iv. 385.

Persons arrested for contempts may be bailed, iv. 385.

Proceedings in prosecutions for contempts, iv. 386.

Jailors may take bonds for the bounds and special bail, iv. 387.

Jailors to give bond of office, iv. 387.

County not to maintain debtors in prison, iv. 387.

Marriage of a female *pendente lite* shall not abate the suit, iv. 387.

Judgment may be entered against an officer failing to take sufficient bail, iv. 387.

Consideration of an assignment need not be alleged in the declaration, iv. 388.

Executors and administrators, how far liable on an appeal or supersedeas bond, iv. 388.

CLAIMANTS, OCCUPYING, various provisions in their favor, i. 642, iv. 245.

CLAIMS, court of, iv. 217.

#### CLAY COUNTY.

Formed, iii. 338.

Election precinct in, iv. 106.

#### CLERGY.

Benefit of, abolished as to free persons, ii. 14.

Secured to slaves, ii. 117.

#### CLERGYMEN.

Their duties and responsibilities as to marriages, ii. 65, &c.

How to obtain credentials for, ii. 65, iii. 203.

Exempted from serving on juries, iii. 402.

#### CLERKS.

##### CLERK OF THE COURT OF APPEALS.

His appointment and duties, i. 103, 560.

His fees, ii. 249.

May receive acknowledgment and proof of deeds, i. 320, 353.

##### VOL. IV.

Deeds may be recorded in his office, i. 320, 565.

##### CLERK OF THE GENERAL COURT.

His appointment and duties, i. 478.

His fees, iii. 214.

May receive the acknowledgment of deeds, iii. 90.

Deeds to be recorded in his office, iii. 90.

##### CLERKS OF DISTRICT COURTS.

Their duties, i. 311, &c.

To receive acknowledgment and proof of deeds, i. 320.

Deeds to be recorded in their offices, i. 320, 565.

Their fees, i. 479, ii. 250.

##### CLERKS OF INFERIOR COURTS.

Their oath and bond, ii. 83.

General duties of office, ii. 84, 85.

Their fees, ii. 250.

May receive acknowledgments of deeds out of court, ii. 262.

##### CLERKS OF CIRCUIT COURTS.

Their duties, iii. 37, &c. 85, &c.

Their fees, iii. 43, 87.

May record deeds, iii. 88.

Deeds no longer to be recorded in their offices, iii. 358.

##### CLERKS OF COURTS.

To keep their offices at the court-houses, ii. 255, 300.

Lists of their fees to be set up, ii. 261.

To transmit memorials of deeds, ii. 261.

(Of county courts) to transmit lists of justices to the secretary, ii. 88.

What oaths they may administer, ii. 370.

Their fees, ii. 250, 299, iii. 83, iv. 190.

Allowance out of the treasury, iii. 262.

Their duties respecting the public debt, iii. 307.

Their duties as to new certificates, iii. 389.

May issue commissions for taking depositions, ii. 99, iii. 524.

May receive relinquishment of dower, iii. 133.

Their duty respecting fines, iii. 375.

Their duty respecting roads, iii. 245.

Clerks to give bond every fifth year, iv. 123.

Their duty respecting lists of taxable property, iv. 162.

Law allowing them paper, &c. repealed, iv. 189.

May be paid for well bound books, iv. 189.  
 Various regulations respecting their fees, iv.  
 190.  
 Their duty in making out complete records,  
 iv. 191.  
 Certain, to refund money drawn from the  
 treasury, iv. 207.  
 To note the time of returning executions, iv.  
 278.  
 Certain, allowed further time to execute  
 bonds, iv. 281.  
 Clerks, penalty on, (V) ii. 564.

CODE, CRIMINAL, ii. 445, iii. 50, 148,  
 186, 246.

#### COLLECTORS OF TAXES.

When not to seize slaves, i. 545.  
 When they may be appointed by county  
 courts, i. 681, ii. 57.  
 May appoint deputies, i. 681.

COLLIERS, inspection, (V) iii. 582.

COLLUSION, (E) ii. 541.

COLLUSIVE RECOVERIES, ii. 41.

COLUMBIA, town of, iv. 2, 166.

COMMISSIONERS (for adjusting land  
 claims).

By Virginia, their appointment, i. 399.  
 Their powers and duties, i. 400, 424, &c.  
 By Kentucky, i. 350, ii. 91.  
 Commissioners for partitioning lands, i. 554.  
 For valuing lands executed, i. 670.

COMMISSION, of sheriffs, ii. 525, (V)  
 258, iii. 144.

COMMITTEES, of persons of unsound  
 mind, i. 191.

COMMON INFORMERS, (E) ii. 531.

#### COMMON LAW.

Criminal, ii. 445, iii. 50, 148, 186, 246.  
 Common law as to riots, &c. revived, iv. 80.

Common tenants in, how they may obtain  
 partition, i. 510, iv. 240.

#### COMMONWEALTH.

Civil suits of, provided for, iii. 189.  
 Recognizances to be taken to, iv. 79.  
 Bonds of officers to be taken to, iv. 123.

#### COMPLETE RECORDS.

To be made up in land cases, i. 311, 507.  
 When not to be made out, iii. 502.  
 Duty of clerks in making out, iv. 191.

COMPOUNDING PENAL PROSECU-  
 TIONS, punishment of, ii. 477.

CONCEALING, the death of bastards, ii.  
 467.

#### CONFESSION OF JUDGMENT.

May be made, ii. 336.  
 When not to be made by executors and ad-  
 ministrators, iv. 270.  
 Shall be tantamount to a release of error, i.  
 500.

CONGRESSIONAL DISTRICTS, iii. 5,  
 iv. 402.

CONSCIENTIOUS PERSONS, provi-  
 sions in favor of, ii. 216.

#### CONSIDERATION.

Of bonds, impeachable at law, ii. 442.  
 Of assignments, need not be alleged, iv. 388.

#### CONSPIRACY.

Punishment of, (E & V) ii. 546, 569.  
 Conspiracy of slaves punishable with death,  
 iv. 223.

#### CONSTABLES.

Their appointment, i. 101, ii. 35, iii. 126.  
 Acts concerning, i. 145, ii. 36, iii. 126.  
 Their powers and duties, ii. 36, 37, iii. 126  
 to 131.  
 How removable from office, ii. 466.  
 Their fees, ii. 260, 299.

Their commission in certain cases, iii. 328.  
May serve declarations in ejectment, iii. 458.  
To give bond in penalty of 1000 dollars, iv. 344.

CONSTITUTION, FEDERAL, amendments to, i. 76, 223, iii. 149.

CONSTITUTIONAL PRIVILEGES, protected, i. 198.

#### CONSTRUCTION.

Of grants and devises, i. 571.  
Legal, rules of, changed, ii. 208.

#### CONTEMPTS.

Power of punishing, restricted, i. 198.  
Made bailable, iv. 385.  
Proceedings in attachments for, iv. 386.  
Contempt, process of, when and where not to issue, i. 521, 522.  
Contempts by jurors, i. 476.

CONTINGENT REMAINDERS, when good, i. 572.

#### CONTRACTS.

Actions on, where to be brought, (E) ii. 515.  
Of boatmen, specific performance to be compelled, i. 262.  
Between master and servant, void, ii. 8.

CONTRIBUTION, right of, saved, i. 540.

CONVENTION, act for calling one, ii. 211

#### CONVEYANCES OF LANDS.

By residents, i. 565-7.  
By non-residents, i. 568.  
By persons residing in other counties, i. 569.  
Construction of, i. 571.  
By husband of wife's land, not to affect the wife's right, ii. 90.  
Conveyances, fraudulent, i. 371, ii. 536 (E).  
Conveyances, English acts respecting, ii. 493 to 498.  
Of pretended titles, iv. 569.  
Conveyances by commissioners in chancery, iii. 18, 460.

By present register, of lands sold by former, iii. 313.

By sheriff, of lands sold by former sheriff, iv. 83.

What conveyances void as to purchasers and creditors, but valid between the parties, (V) iv. 163.

Conveyances by non-residents, how to be executed, (V) iv. 164.

Two witnesses sufficient to a deed, iv. 165.

How deeds to be admitted to record, iv. 165.

Acknowledgment by wife to, iv. 165.

Of non-resident *femes covert* under power of attorney, iv. 363.

Of persons renouncing the marriage contract, how far void, iv. 408.

Conveyance of undivided lands, i. 123, 148, 180, 255, 279, 689—iii. 18, 460—iv. 238.

Of lands of infants and absentees, i. 123, 148, 180, 255, 279, 689—iii. 18, 460—iv. 238.

#### CONVICTS.

Not to be brought into the state, (V) ii. 569.

In the penitentiary, how to be kept, ii. 481.

How punished for misdemeanors, ii. 11.

Their families and estates, iii. 74.

May be witnesses in certain cases, iii. 515.

May be sued, &c. iii. 74.

Convicted again of the same offence, iv. 80.

To be subsisted out of their own labor, iv. 150.

#### COPIES.

Copy of a decree to be served on returning absent defendants, i. 594.

Copy of order against, to be advertised, i. 594-5.

Copy of caveat to be filed in court, i. 159, 501.

Copy of attachment in chancery, leaving one amounts to execution, i. 312, 522.

Copy of a writ to be left, i. 584, ii. 402.

When to be thrown down, ii. 402.

Copy of a bond, when to be admitted on oyer, i. 302.

Copy of impeachment to be served on the case, i. 133.

Copy of a patent to be evidence, i. 407.  
 Copy of surveys, when not to be delivered, i. 416.  
 Copies of laws to be transmitted by the governor, i. 681.  
 Copies of entries to be deposited in the register's office, ii. 302.  
 Copies of entries in the military district to be deposited in the register's office, ii. 110.  
 Copies of deeds recorded in the circuit courts may be certified by county court clerks, iii. 359.  
 Copy of petition and summons to be left with the defendant, iii. 320.  
 Copies of orders appointing surveyors of roads to be served, iii. 459.

**CORAM VOBIS, WRITS OF ERROR,**  
 iii. 92, 120.

**CORDAGE,** deceitful making of, (E) ii. 551.

#### CORONERS.

To serve attachments where the sheriff is interested, i. 595.  
 His fees, i. 167, ii. 259.  
 Office vacated by non residence, i. 167.  
 His powers, duties and responsibilities, ii. 69.  
 Security for sheriff not to be a coroner, ii. 415.  
 Coroners may summon juries, iii. 131.  
 Implicated in a criminal prosecution, provision for, iv. 69.  
 Coroners to give bond, iv. 124.

**CORNER TREES,** defacing of, &c. made felony, iv. 78.

#### COSTS.

Costs on dismissing a bill in chancery, i. 312, 521.  
 Costs on amendments in chancery, i. 312, 521.  
 Costs in suits at law, i. 489.  
 Costs on nonsuits, i. 497.  
 Full costs given in slander, trespass, assault and battery, ii. 403.  
 Security for, to be given in civil suits, ii. 440, 510, 521, (E) iv. 339.

Security for, may be required in penal prosecutions, i. 475.

Where prosecutor in, shall pay costs, i. 474.  
 Costs on dissolution of injunctions, ii. 295.  
 Costs of *scire facias* to be paid by bail, i. 305, 495.  
 Costs on affirmance of judgments, i. 106, 563.  
 On partial reversal, i. 106, 563.  
 What costs to be taxed in the court of appeals, i. 104.  
 Costs on impeachments, i. 134.  
 Costs on applications for removal from office, ii. 356, iv. 188.  
 Costs in prosecutions under the riot act, iii. 57.  
 Costs in writs of forcible entry and detainer, iv. 183, 185.  
 Costs on presentments by grand juries, iii. 353.

Costs on writs of error *coram vobis*, iii. 92.  
 Costs on suits before magistrates, i. 378.  
 On appeals from, to county courts, i. 377-8.  
 On appeals from, to circuit courts, iv. 343.  
 Costs on amendments at law, iv. 178.  
 On applications for continuance, iv. 261, 180.  
 Costs of continuance, execution may issue for, iv. 342.  
 In what cases executors and administrators liable for, on appeals, iv. 388.  
 Costs, officers to pay, in some cases, although nothing is due from them, i. 60.

**COTTON,** inspections of, established, iii. 20.

**COUNCIL,** orders of, and entries in their books, i. 392, 405.

#### COUNSEL AT LAW.

How licensed, i. 365, iii. 88.  
 To be assigned in suits against attorneys, iii. 215.  
 To be assigned slaves prosecuted criminally, iii. 403.

**COUNTERFEITING,** punishment for, ii. 13, 410, iii. 66.

**COUNTIES,** boundaries of certain, defined, iv. 142.



## COURT OF APPEALS.

Established, i. 102, 560.  
 Proceedings in, i. 104, 562, &c.  
 Original jurisdiction taken away, i. 299.  
 Clerk of, his appointment and duty, i. 103, 560.  
 Deeds may be acknowledged before him and recorded in his office, i. 320, 565.  
 Rules of proceeding in the court of appeals, ii. 226, 310, 412.  
 Number, time and length of its terms, ii. 412.  
 Provision against the discontinuance of, ii. 412.  
 Its adjournments, iii. 100, 178.  
 Appeals in, regulated, iii. 178.  
 Not to entertain jurisdiction on replevin bonds and executions, iii. 92.  
 No appeal to, on dissolution of injunctions, iii. 498.  
 Two judges to form a court in certain cases, iii. 484.  
 Sergeant appointed and his duties, iv. 81.  
 Process of, not to run in the name of the chief justice, iv. 171.  
 Judges of, to be commissioned generally, iv. 171.

COURT, FEDERAL, suits may be removed from it to the general court, iv. 22.

## COURT OF OYER AND TERMINER.

Established, i. 98.  
 Abolished, i. 321.

## COURT, GENERAL.

Established, i. 478, ii. 309, iii. 42.  
 Its jurisdiction, i. 478, ii. 309, iii. 42, iv. 70.  
 When to be held, ii. 444.  
 Act concerning their term, iii. 118.  
 Allotment of judges in, iii. 214, 318.  
 Suits brought in, false suggestions, iii. 214.  
 Terms of, unlimited, iv. 22.  
 To sit in July instead of May, iv. 406.

## COURTS, DISTRICT.

Established, i. 300, ii. 123.  
 Their jurisdiction, i. 300, &c. 478, ii. 128.

Rules of proceeding in, i. 300, &c. 478, &c. ii. 126, &c. 232.  
 Abolished, iii. 371.

## COURTS, QUARTER SESSION.

Established, i. 98, 502.  
 Proceedings in, regulated, i. 98, 157, 203, 353, 502, ii. 482.  
 Deeds to be recorded in offices of, i. 203, 565.  
 Abolished, iii. 45, 184.

## COURTS, CIRCUIT.

Established and jurisdiction, iii. 37, 184.  
 Rules of proceeding in, iii. 40, 85.  
 To conform to the laws respecting quarter session and district courts, iii. 40.  
 State laid off into districts for, iii. 504.  
 Additional terms given to some, iv. 95, 131.

## COURTS, COUNTY.

Their establishment and jurisdiction, i. 90, 157, 201, 374.  
 Their jurisdiction and duty in appeals, i. 91, 377, ii. 411, 465, iv. 56.  
 In appointing constables and dismissing them from office, i. 101, ii. 35, iii. 126.  
 As to wills, i. 613.  
 Letters of administration, i. 618.  
 Mills, i. 606, iii. 9, iv. 148.  
 Roads, i. 633, ii. 431, iii. 126, iv. 361.  
 Guardians, i. 674.  
 Deeds, i. 372, 565, ii. 262, iii. 358, iv. 163.  
 Inspections, i. 135, 258, 330, 335, 379—ii. 137, 280, 382, 391, 456—iii. 20, 123, 237, 321, 329, 526—iv. 13, 167.  
 Ordinaries, i. 363.  
 Proceffioning lands, i. 554.  
 Apprentices and servants, i. 192, 677, ii. 6.  
 Ferries, i. 361, ii. 219, iii. 361.  
 Poor, i. 191, ii. 87, iii. 133.  
 Establishment of towns, i. 512.  
 Division of lands, i. 690, iii. 18, iv. 238.  
 Titheables, i. 678, iv. 38.  
 Revenue, iv. 159, 261, 420.  
 Bastardy, i. 282.  
 Vagrants, i. 288.  
 Patrollers, ii. 264.  
 Slaves, ii. 215, 417, iii. 403, iv. 69, 223.  
 Jailors, ii. 294, iii. 242.

In what cases a majority of justices must be present, *iv.* 172.  
Failing to lay levy, may do it at next term, *iv.* 217.

COURTS, time of holding certain, altered, *iv.* 152, 232, 235, 252, 326, 333, 363.

COVENANTS, in consideration of marriage, *i.* 568.

#### COVENANT, ACTION OF.

Bail demandable in, *i.* 492-3.  
May be brought on unsealed writings, *i.* 509, [repealed] *iv.* 385.

COWARDICE, sheriff's punishable for (*E*) *ii.* 540.

#### CRIMINAL PROSECUTIONS.

Before superior courts, *i.* 467, &c.  
Before inferior courts, *i.* 470, &c.  
General provisions respecting, *i.* 472 to 476.  
Statute of jeofails respecting, *iii.* 291 to 295.  
Various regulations respecting, *iii.* 291 to 295.  
Duty of justices of the peace in, *iv.* 67.  
Duty of clerks in, *iv.* 68.  
No advantage to be taken of irregularity in, *iv.* 69.  
Courts of examination abolished, *iv.* 70.  
Recognizances in, form of, *iv.* 69.

#### CUMBERLAND COUNTY.

Formed, *ii.* 202.  
Part of it added to Barren, *ii.* 265.  
Part added to Adair, *ii.* 172.  
Part of last act repealed, *ii.* 251.  
Election precinct formed in, *iv.* 328.

CURSING, *ii.* 479.

#### CURTESY.

Tenantcy by, (*E*) *ii.* 493.  
Trust estates subject to, *i.* 573.

CUT MONEY, acts respecting, *iv.* 45, 192, 418.

#### CYNTHIANA, TOWN OF.

Established, *i.* 178.  
Acts concerning, *iii.* 2, 325, *iv.* 97, 358.

#### DAMAGES.

On appeals and writs of error with superedeas, *i.* 106, 563, *ii.* 226.  
On inland bills of exchange, *ii.* 103.  
On dissolution of injunctions, *ii.* 295.  
On writs of error *coram vobis*, *iii.* 93.  
Assessment of, on bonds with collateral conditions, *i.* 491.  
What the alienees of disseisors shall answer for, (*E*) *ii.* 508.

#### DANVILLE.

Town of, established, *iii.* 561.  
Nuisances, shooting and racing in, prohibited, *i.* 341.  
Various regulations respecting, *ii.* 178.  
Further regulations respecting, *ii.* 274.  
Acts concerning it amended, *ii.* 397.  
Trustees of, their election, *iii.* 136.  
Acts concerning it, *iii.* 377, 410.  
Act regulating, *iv.* 39.

DEAD BODIES, burial of, (*V*) *ii.* 567, *ii.* 71.

DEATH, presumption of, *ii.* 34.

#### DEBT.

Action of, for an escape, *ii.* 28.  
Action of, against heirs and devisees, *i.* 598.  
Action of, for money or property lost at play, *ii.* 104.

#### DEBT, PUBLIC.

Statement of, to be obtained and how, *iii.* 396.  
Sales of lands for, *ii.* 478.  
Interest of infants protected in sales of lands for, *iii.* 482, *iv.* 107.  
Sales of lands for, suspended, *iv.* 14, 246, 333.  
Installments of, when and how payable, *iv.* 118.  
Various regulations respecting, *iv.* 333.

Sales for, when to commence, iv. 334.  
Interest on, &c. iv. 334.

## DEBTORS, PUBLIC.

Proceedings against, ii. 415.  
In what courts suits may be brought against them, iv. 70.

## DEBTORS.

Act for the relief of; unconstitutional and expired, iv. 49.  
Committed to jail, the county discharged from paying for their support, iv. 387.

DECEIT, writ of, (*E*) iii. 514.

## DECLARATION.

When to be filed [the obsolete law on this subject may be found in vol. i. 497, &c.] iv. 175.  
To recover money lost at play, need not be special, ii. 104.  
Need not set forth the consideration of an assignment, iv. 388.

## DEEDS:

How to be made and authenticated, i. 565, &c. ii. 76, iv. 164, 165, &c.  
Not to be recorded in the circuit court offices, iii. 358. (See also conveyances.)  
Defacing corner trees, made felony, iv. 78.

DEER, killing of, (*V*) ii. 554, 557, &c.

DELINQUENT SHERIFFS, proceedings against, ii. 63-4.

## DEMURRER.

When it may be filed, iv. 178.  
When not to be sustained, iv. 260.  
In chancery, i. 524, iv. 178-9.

## DEPOSITIONS.

In chancery, i. 525, ii. 403, iv. 179.  
How to be taken in suits at law, ii. 99, iii. 524, iv. 337.  
On trial of caveats, iv. 283.

May be taken without *dedimus*, iv. 337.  
May be taken before a single justice, iv. 337.  
Of vexatious notices respecting, iv. 337.

## DEPUTY SURVEYOR.

Who shall be entrusted with the office, to be appointed, (*V*) i. 439.

DESCENTS, act regulating the course of, i. 557.

DESTRUCTION OF RECORDS, act respecting, iii. 155.

DETAINER, FORCIBLE, proceedings on writs of, iv. 185.

DETINUE, distress in, may be superseded, (*V*) iv. 383.

DEVASTAVIT, action for *plene admittitavit* may be plead to, iv. 269.

## DEVICES.

Act respecting, i. 611.  
Fraudulent, prohibited, i. 598.

## DISCLAIMER.

At common law, i. 489.  
In chancery, i. 521.

DISFIGURING, punishment of, ii. 132.

DISSEISIN, punishment of, (*E*) ii. 541.

DISTILLERS, of unwholesome liquors punishable, (*V*) ii. 569.

## DISTRESS.

For taxes, i. 585.  
For rent, (*E* & *V*) ii. 500 to 508, iv. 271.

## DISTRICT COURTS.

Established and regulated, i. 300, 477, ii. 97, 123, 232.  
Abolished, iii. 37.

DISTRICTS, CONGRESSIONAL, state divided into, iv. 409.

**DISTRICTS, JUDICIAL**, state divided into, iii. 504.

**DISTRINGAS IN DETINUE**, may be superceded, (*V*) iv. 383.

**DISTURBING WORSHIP**, ii. 480.

**DIVISIONS OF LANDS**, acts respecting, i. 690, iii. 18, 460, iv. 238.

**DIVISION LINES OF COUNTIES**, by whom run and paid for, ii. 247.

#### DIVORCES.

Power of granting, vested in the circuit courts, iv. 19.

Causes for, and mode of proceeding in, iv. 19.  
On renunciation of the marriage contract, iv. 409.

**DOCKETT**, when to be made out, iv. 177.

**DOGS**, may be taxed in Fayette county, iv. 268.

**DOVE**, advertisements may be inserted in, iv. 53.

#### DOWER.

Relinquishment of, i. 157, 568, iii. 133, iv. 164, 165, &c.

Assignment of, i. 517, iii. 133.

Admeasurement of, (*E*) ii. 509.

Laws of England respecting, extended to Virginia, (*V*) i. 516.

In lands, protected against *fi. fa.* i. 132.

Against insolvency of husband, i. 143, 548.

#### DUELLING.

Punishment of, ii. 285.

Act to suppress, iv. 381.

Oath to be taken against, iv. 382.

**DURESS**, how punishable, (*E*) ii. 522, 542.

#### EAGLE CREEK.

Declared a navigable stream, iii. 513.

Not to be considered a navigable stream, iv. 38.

**EDDYVILLE**, town of, act regulating, iv. 319.

#### EJECTMENT.

When no exception may be taken to the declaration in, i. 500.

Ejectments may be brought in the name of the real plaintiff against the real defendant, ii. 401.

Sheriffs and constables may serve declarations in, iii. 458.

#### ELECTIONS.

General act concerning, ii. 339.

Amendatory temporary act, ii. 408.

Amendatory acts, iii. 91, 472.

Writs of, when to be issued by the governor, iii. 91, 472.

In Bracken and Grayson, where to be held, iv. 241.

Of president and vice-president, iv. 410.

#### ELECTION PRECINCTS.

Established in certain counties, ii. 384, 400—iii. 3, 103, 172, 244, 255, 259, 319, 344, 410, 413, 487.

In Ohio county, amendatory act concerning, iv. 416.

Established in Livingston, Caldwell, Breckenridge, Hopkins, Cumberland, Christian, Washington and Greenup counties, iv. 327.

Established in Clay and Gallatin counties, iv. 106.

Established in Montgomery county, iv. 173.

Formed in Caldwell and Hardin counties, iv. 201.

Formed in Knox county, iv. 205.

Formed in Christian, Hardin, Casey, Greenup and Lewis counties, iv. 224.

#### ELIZABETH TOWN.

In Christian county, its name changed to Hopkinsville, iii. 183.

In Hardin county, act concerning, iv. 375.

ELIZORS, when to be appointed, iv. 69.

ELKHORN, NORTH, bridge across, iv. 87.

EMBEZZLING RECORDS, how punished, ii. 476.

EMBRACERY, how punished, ii. 476, iii. 68.

ENGRAVING FOR BANK NOTES, iii. 66.

ENCLOSURE, what shall be a lawful one, ii. 27.

ENGROSSING, definition and punishment of, (V) ii. 562.

#### ENTRY BOOKS.

Act concerning, i. 338, ii. 303.

Copies of, in the register's office, to be compared with the originals, iii. 530.

#### ENTRIES FOR LAND.

Settlers entitled to entries with the surveyor on producing certificates, &c. i. 390.

On pre-emption warrants, i. 397.

How to be made, i. 410.

Not unless on warrants or certificates for settlement, i. 410.

Where not to be made, i. 411.

Certain entries declared illegal, i. 411.

In Kentucky, act for the preservation of, i. 458.

Made before the division of counties, to be delivered to the surveyor of the new county for lands lying within such county, i. 455.

Into lands, when not to be made, i. 381.

For land, in certain cases void, iv. 229.

ENTRIES OF OBTULERINT SE, &c. not to be made unless true, (E) ii. 517.

ENTRIES, FORCIBLE, proceedings in case of, iv. 182, &c.

#### VOL. IV.

ENTERTAINMENT, not chargeable for, without special contract, (V) ii. 582.

ENUMERATION, acts for, i. 166, 224, ii. 231.

#### ERROR.

Writs of, reversioners may maintain on judgments against tenants, (E) ii. 511.

Where to be assigned in matters of law only, i. 563.

Where they may be assigned in law and fact, i. 563, ii. 219.

Assignment of, ii. 310.

What shall not be error, i. 485, 499, ii. 311.

Writ of, limitation to, i. 564.

Writ of error *coram vobis*, proceedings in, iii. 92, 120.

Writ of, not to lie on a judgment in a caveat, i. 500-1. iv. 81.

Writs of, to lie on judgments in caveats, iv. 284.

#### ESCAPES.

Proceedings in case of, i. 85, 591, ii. 31.

Furnishing a prisoner with means of making, punishable, i. 592.

On apprehension of, the sheriff may summon a guard, i. 592.

Action of debt maintainable against a sheriff for, iii. 34.

What finding of a jury necessary to maintain, ii. 34.

Private persons punishable for permitting escapes in certain cases, ii. 34.

#### ESCHEATORS.

To be appointed, their duty and proceedings before them, ii. 29, 30.

Penalty on, for failing to return inquisition, (E) ii. 519.

Penalty on, for refusing to receive one, (E) ii. 520.

In what cases a *melius inquirendum* shall be awarded, (E) ii. 520.

ESTATES, TAIL, abolished, i. 572.

## ESTATES.

Conveyances of, i. 565, &c.  
Division of, to be made on granting divorces,  
iv. 20.

## ESTILL COUNTY.

Formed, iii. 441.  
Supplementary act concerning, iii. 473.  
Authorized to procure seminary lands, iv. 66.  
Town established in, iv. 339.

## EVIDENCE.

In criminal prosecutions, to be written by the  
justices, iv. 68.  
Certificate of a notary public sufficient, iv.  
332.

EXAMINING COURTS, abolished, iv. 67.

EXAMINER, advertisements may be in-  
serted in, iv. 126.

## EXCEPTIONS.

Bill of, to be allowed, ii. 31.  
Proceedings where an inferior court refuses to  
sign one, i. 203, ii. 402.

## EXCHANGE.

Bills of, ten per cent. given on protested, i.  
178, ii. 101.  
Foreign, ii. 101-2.  
Domestic, ii. 102.  
Inland, ii. 103.

## EXECUTIONS.

The law in detail respecting, i. 137 and 535  
to 551.  
Lien of executions, i. 129, 540.  
How to issue against several defendants, i.  
207, 539.  
Lands not to be sold under contracts made  
before the 17th of December 1792, i. 210.  
Provision against, in favor of landlords, i. 542.  
In what cases they may issue to other coun-  
ties, i. 142, 208, 541.  
By executors and administrators on replevin  
bonds, without motion or notice, i. 270.

From county courts, returnable to the next  
term, i. 270.

On forthcoming bonds, without notice, i.  
671.

Lands taken in execution to be sold at three  
months' credit, ii. 334.

May be replevied, and proceedings on the  
replevin bonds, ii. 335.

English acts respecting of, ii. 533, 534.

Plaintiff may move to have them quashed,  
iii. 59.

Lands sold under, by a former, to be convey-  
ed by the subsequent sheriff, iv. 83.

On replevin bonds and bonds for sale of lands,  
acts concerning, iv. 264.

May issue for costs of continuance, iv. 342.

Privileged persons, when to return themselves  
prisoners in, (V) iv. 383.

Executed, valid though not directed to any  
sheriff, (V) iv. 383.

From magistrates, i. 376, ii. 466.

## EXECUTORS.

Their duty at large, i. 615.

Have a right to distrain, and when liable to  
be distrained on, for rent, (E) ii. 502.

Service of a writ on one shall authorize a judg-  
ment against all, (E) ii. 514.

May maintain an *idemtitate nominis*, (E) ii.  
517.

Liable only for amount of assets, iv. 269.

Not to be sued within six months, iv. 269.

May plead *plene administravit* to an action for  
a *devastavit*, iv. 269.

Not to confess judgment within six months,  
iv. 270.

Non-resident, in what cases they may prose-  
cute suits, iv. 338.

How far liable on appeal and superfedas;  
bonds, iv. 388.

## EXIGENTS.

May be awarded in actions of account, (E)  
ii. 513.

In actions of debt, detinue and replevin, (E)  
ii. 514.

## EXPATRIATION.

How a man may expatriate himself, (V) ii. 539.

EXPORTING, tobacco or flour, on forged stamps, ii. 472.

EXPRESSES, to be employed by the governor, i. 648.

EXPULSION, of members of assembly, act concerning, iv. 186.

#### FALMOUTH.

Town of, act establishing, i. 626.

Act concerning, iv. 364.

FARMER'S FRIEND, advertisements may be inserted in, iv. 53.

FATHERS, abandoning their children, iv. 408.

#### FAYETTE COUNTY.

Boundaries of, i. 626.

Term of its circuit court extended, iv. 52.

FEDERAL CONSTITUTION, amendments, i. 76, 223, iii. 149.

FEDERAL COURT, causes may be removed from it to the general court, iv. 22.

#### FEES.

Collection of, i. 588, iii. 131.

Fees chargeable in tobacco to be charged in money, i. 88.

Clerks to set up a list of their own and sheriffs, i. 89, ii. 261.

Of justices of the peace, i. 112, 124—ii. 259, 300—iii. 48, 295, 359, 376—iv. 186, 343.

In forcible entry and detainer, i. 186.

Of sheriffs, ii. 256, iii. 144, 169.

Act of 1745 respecting sheriffs' fees revived, i. 155, 167.

For taking a bail bond, no longer demandable, iv. 176.

In prosecutions for forcible entry and detainer, iv. 186.

On prosecutions for contempts, iv. 386.

When sheriffs are not to charge any fees on an indictment, i. 155.

Register's, ii. 246.

Surveyors', ii. 247, 413, iii. 36, 234.

Assignee liable for surveyor's fees, ii. 248.

Of clerk of court of appeals, ii. 249.

Of the clerk of the general court, iii. 214.

Of district and quarter session court clerks, ii. 250, 299.

Of county court clerks, ii. 254.

Of clerks, for transmitting lists of deeds, ii. 262.

On presentments, when not chargeable, ii. 261.

Of coroners, ii. 259.

Of constables, ii. 299.

Of the sergeant of the court of appeals, iv. 82, 419.

Fee bills returned delinquent, iv. 59.

Right to distrain for, in what cases retained, iv. 58.

#### FELONY.

Felonies committed out of any county, where punishable, (V) i. 465.

Attaint of, shall cause no forfeiture of goods, i. 474.

All penitentiary offences, except gaming, declared felony, iii. 52.

FEMES COVERT, non-resident, may convey their lands by attorney in fact, iv. 363.

FENCES, what lawful, ii. 27.

FEOFFMENTS, the validity of, (E) ii. 495.

#### FERRIES.

To be established by county courts, and how, i. 361.

Leaves, an appeal given in, on law and fact, ii. 219.

Craig's, established, ii. 231.

County courts may establish ferries across the Ohio, iii. 361.

Various regulations respecting, iii. 361 to 363.

Ferry keepers, their duty respecting roads, iv. 361.

FERRIES ESTABLISHED BY VIRGINIA.—Across Kentucky river, at Boonsborough, iii. 585.

Across Kentucky, at the mouth of Hickman, iii. 586.

Across Kentucky, at the mouth of Jack's creek, iii. 586.

Across Kentucky, at Stone Lick, iii. 586.

Across Kentucky, at Frankfort, iii. 558.

Across Kentucky, at the mouth of Dick's river, iii. 561.

Across Cumberland river, in Lincoln county, iii. 586.

Across the Ohio, at the mouth of Silver creek, iii. 586.

Across the Ohio, at the mouth of Mill creek, iii. 586.

FIGHTING, among gamblers, punishment of, (V) ii. 558.

FILING PAPERS, time of, to be endorsed, iv. 180.

#### FINCASTLE:

County of, divided, i. 626.

Residents of, had an equitable interest in land, (V) i. 389.

#### FINES.

Imposed by the Virginia laws into tobacco, recoverable in money, i. 88.

Joint actions may be brought against county court justices for, i. 475.

Imposed by the act of 1801, appropriated, ii. 481.

The duty of magistrates, constables, clerks and sheriffs respecting, iii. 353, 374, &c.

For employing slaves, servants or infants to run races, iv. 78.

Fine on petit jurors discretionary in the court, iv. 84.

Fines not to be acknowledged under power of attorney, (E) ii. 494.

FIRE, penalty for making fire near water-works, iv. 148.

#### FIRE COMPANIES:

Fire companies authorized, ii. 45.

Engine to be procured at the public expense, iii. 376.

Mutual assurance society against, established, iv. 253.

Mutual assurance society, amendatory act concerning, iv. 375.

#### FISH.

Unlawfully taken, (E) ii. 548.

Fishing unlawfully, (V) ii. 557.

#### FLEMING COUNTY.

Formed, ii. 175.

Seat of justice fixed in, ii. 188.

FLEMINGSBURGH, town of, act concerning, iv. 358.

FLOUR, inspections of, i. 135, 258, 330, 370, 379, 606—ii. 391, 456, &c.

FLOUR BARRELS, what shall be a sufficient hoops of, iv. 167.

FLOYD COUNTY, formed, ii. 282.

FORESTALLING, definition and punishment of, (V) ii. 561.

#### FORGERY.

How punished, ii. 472, 474, iii. 65.

Of land warrants, iii. 64.

Of auditor's warrants, ii. 410.

#### FORFEITURE.

Of town lots, for want of improvements, abolished, ii. 458.

Of money bet, ii. 285.

Of lands bought by sheriff for taxes, ii. 328, 329.

Of vacant lands, for not paying the purchase money, abolished, iii. 135.

FOREIGN BILLS OF EXCHANGE, law respecting, ii. 101.

FOREIGN COUNTRIES, importation of slaves from, prohibited, ii. 119.

FOREIGN JUDGMENTS, how to be authenticated, ii. 76.



## FORNICATION.

Punishment of, ii. 479.  
Charge of, slander, iv. 385.

## FORTHCOMING BONDS.

May be taken, and proceedings on, i. 139,  
543, 671.  
May be taken by constables, ii. 36, iii. 129.

FORCIBLE ENTRY & DETAINER,  
proceedings in at large, iv. 182, &c.

FOWLING, unlawful, (V) ii. 557.

## FRANKFORT.

Town of, established, (V) iii. 557.  
Act establishing it amended, iii. 558.  
Further amended, i. 247.  
Trustees of, their election and various powers, i. 640.  
Amendatory act concerning, iv. 52, 143, 369.  
Repealing act respecting, iv. 73.  
John Brown authorized to erect a bridge at,  
iv. 350.  
Public buildings in, act for their preservation, iv. 276.  
Bridge company incorporated, iv. 137.  
Amendatory act concerning, iv. 324.

FRANKFORT LIBRARY, company incorporated, iv. 359.

## FRANKLIN COUNTY.

Boundaries of, i. 632.  
Academy established in, ii. 388.

FRANKLIN ACADEMY, established, i. 296.

FRAUDS AND PERJURIES, act to prevent, i. 371.

FRAUDULENT CONVEYANCES,  
What shall be deemed so, i. 372.

FRAUDULENT DEVISES, act against,  
i. 598.

FREE NEGROES, their migration to this  
state prohibited, iii. 499.

FUGITIVES FROM JUSTICE, how to  
be proceeded with, iii. 108, 300.

## GALLATIN COUNTY.

Formed, i. 384.  
Seat of justice in, fixed, iii. 247.  
Election precinct formed in, iv. 106.

## GAMESTERS.

To be treated as vagrants, i. 292.  
Cheating to become infamous, and be punished as if guilty of perjury, (V) ii. 558.  
To be sent to the penitentiary, ii. 481.

## GAMING.

Contracts void, ii. 103.  
Money bet or staked forfeited, ii. 284.  
Gambling machines to be destroyed, iii. 176.  
Gaming not felony, although a penitentiary offence, iii. 52.

GARRARD COUNTY, formed, i. 384.

## GENERAL ASSEMBLY.

Their powers and privileges, i. 292.  
Time of their meeting, ii. 44, iii. 399, 473,  
iv. 44.  
Wages of members of, raised, iii. 404.

## GENERAL COURT.

Constituted, and its jurisdiction, i. 478, ii. 128, 309, iii. 42.  
Its jurisdiction in civil suits between residents and non-residents, &c. ii. 309.  
Causes may be removed from the district courts to it, ii. 309.  
To be under district court laws and regulations, ii. 310.  
Adjournment of questions to, ii. 310, iii. 43.  
Suits brought in, on false suggestions, iii. 214.  
Judges of, to be classed, iv. 21.  
Term of, unlimited, iv. 22.  
Suits may be removed from the federal court to it, iv. 22.  
Its jurisdiction as to public debtors, iv. 70.  
To sit in July instead of May, i. 406.

## GEO ]

## INDEX.

## [ GUA

## GEORGETOWN.

Established, (*V*) iii. 570.  
 Trustees of, ii. 178.  
 Acts concerning, iii. 113, 197.  
 Part of a former act respecting it repealed, iv.  
 109.

GERMANTOWN, its establishment, i.  
 329, 653.

## GIFTS.

Fraudulent, void, i. 371.  
 Of slaves, to be evidenced by writing, ii. 123.

## GLASGOW.

Town of, act concerning, iv. 24.  
 Amendatory acts concerning, iv. 204, 375.

GLOBE, advertisements may be inserted in,  
 iv. 84.

## GOOSE CREEK SALT-WORKS.

Turnpike on the road leading to, iv. 170.  
 Road to be extended, iv. 407.

## GOVERNOR.

To offer a reward for apprehending criminals,  
 i. 234.  
 To transmit certain papers to the secretary of  
 war, i. 346.  
 To employ expresses, i. 648.  
 To cause the acts of assembly to be trans-  
 mitted, i. 681.  
 Postage on communications to him to be paid  
 out of the treasury, ii. 391, iii. 235.  
 Not permitted to draw money from the treasu-  
 ry to pay for fuel, ii. 455.  
 When to issue writs of election, iii. 91, 472.  
 His duty respecting fugitives from justice, iii.  
 102, 300.  
 To pay postage on military communications,  
 and to draw on the treasury therefor, iii.  
 235.  
 Made sole inspector of the penitentiary, iii.  
 400.  
 Authorized to draw on the treasury for the  
 carriage of Books, &c. iii. 323.

## GRANTS.

For land, from Virginia, how to be obtained,  
 i. 415.  
 Form of, i. 415.  
 Of Virginia land, by Kentucky, i. 159, ii.  
 111.  
 Issued to a dead man, to descend to his heirs,  
 i. 160, ii. 112.  
 Fraudulent, void, i. 371.  
 Validity of, (*E*) ii. 495.  
 In consideration of maintenance, void, (*E*)  
 ii. 544.  
 Left incomplete by the late register, to be  
 completed by the present register, iii. 141.  
 Grant of land to Henderson and company, (*V*)  
 iii. 587.  
 For lands sold for taxes, li. 327, &c.

## GRAND JURIES.

How summoned, &c. i. 468, 470.  
 May be summoned in term time, iv. 241.

## GRAYSON COUNTY.

Formed, iv. 129.  
 When elections are to be held in, iv. 241.

## GREEN COUNTY.

Boundaries of, i. 631.  
 Line of, altered, iii. 198.

GREENSBURGH, established, i. 272.

## GREEN RIVER.

Act for improving the navigation of, iii. 469.  
 Act to improve the navigation of, amended,  
 iv. 208, 338.

## GREENUP COUNTY.

Formed, iii. 117.  
 Academy established in, iv. 127.  
 Election precinct formed in, iv. 224, 330.

GREENVILLE ACADEMY, incorpora-  
 ted, iv. 113.

## GUARDS.

How to be summoned, ii. 130.

## GUA T

## INDEX.

## I HON

Their allowance and how paid, ii. 130, 259, iii. 89.

## GUARDIANS.

May leave their wards' lands, (V) i. 673.  
 Their appointment, powers, duties and responsibilities, i. 674, &c.  
 May submit the land claims of their wards to arbitration, i. 677.  
 Bonds to be payable to the commonwealth, iv. 125.  
 To be appointed to children abandoned by their fathers, iv. 408.

GUARDIAN OF FREEDOM, advertisements may be inserted in, ii. 228.

## HABEAS CORPUS.

Act directing the mode of proceeding in, i. 600.  
 Seal to, unnecessary, i. 479.  
 In chancery, (V) i. 520.  
 May be awarded by the judges of the circuit courts, iii. 43.  
 Where a prisoner shall not be discharged on, iii. 293.  
 May be granted in favor of husbands and parents, to societies renouncing the marriage contract, iv. 409.

HARBOUR, at the mouth of Beargrass, to be under the direction of the trustees of Louisville, iii. 275.

## HARDIN COUNTY.

Boundaries of, i. 631.  
 Line of, iii. 198.  
 Election precinct formed in, iv. 201, 224.

## HARRISON COUNTY.

Boundaries of, i. 631.  
 Repeal of the provisionary clause in the act establishing, iv. 39.  
 Act supplementary thereto, iv. 63.  
 Explanatory act respecting line of, iv. 89.

## HARRODSBURGH.

Established, (V) iii. 552.

Further time to build in, (V) iii. 546.  
 Longer time to improve lots, i. 184.  
 Act establishing it amended, ii. 169.

HARTFORD, town of, established, iii. 443.

HEADING OF CASKS, taking out after delivery, ii. 473.

## HEIRS.

What actions may be brought against them, i. 128, 598.  
 May be sued jointly with personal representatives, i. 128.  
 Jointly with devisees, i. 128, 598.  
 May be sued in chancery, although their names are unknown, iii. 19.  
 Of officers, soldiers and sailors, shall inherit the lands to which their ancestor would have been entitled, i. 422.  
 Shall inherit lands granted after the death of their ancestor, i. 160, ii. 112.  
 Of tenants, liable to distress for rent, (E) ii. 502.  
 Entitled to all the benefit of the provisions of the act of 1810, in favor of executors and administrators, iv. 270.

## HEMP MILL COMPANY.

Incorporated, iii. 532.  
 Incorporating act amended, iv. 74.

## HENDERSON COUNTY.

Formed, ii. 227.  
 Part of Ohio added to it, iv. 10.  
 Authorized to procure seminary lands, iv. 65.

HENDERSON, town of, act regulating, iv. 319.

HENDERSON, RICHARD, grant of land to, (V) iii. 587.

HENRY COUNTY, formed, ii. 220.

HOG STEALING, punishment of, iii. 299.

HONEY, corrupt, offering for sale, punishment of, (E) ii. 551.

# HOP]

# INDEX.

# [INT

## HOPEWELL.

Town of, established, (V) iii. 568.  
Act establishing it amended, (V) iii. 569.  
Its name changed to Paris, (V) iii. 570.

## HOPKINS COUNTY.

Formed, iii. 346.  
Authorized to procure seminary land, iv. 66.  
Election precinct established in, iv. 328.

HOPKINSVILLE, town of, iii. 367.

HOPS, brewing beer with corrupt hops, punishment for, (E) ii. 553.

## HORSES.

Act for improving the breed of, i. 136.  
Stray, ii. 78.

HORSE STEALING, punishment of, increased, iv. 78.

HUNTING, unlawful, punishment of, (V) ii. 557.

HUSBANDS, abandoning their wives, proceedings against, iv. 408.

IDEMP TITATE NOMINIS, writ of, (E) ii. 515.

## IDIOTS.

Their estates to be preserved, (V) ii. 577.  
How the fact of idiocy to be ascertained, (V) ii. 578, i. 191.  
Their funeral expenses to be paid by the public, iii. 169.

ILLEGAL SURVEYS, prohibited, ii. 109.

IMPARTIAL OBSERVER, advertisements may be published in, iv. 204.

IMPEACHMENTS, proceedings in, mode of, i. 132.

IMPRISONMENT, justices of the peace to imprison only in the common jails, (E) ii. 545.

INCEST, charge of, slander, iv. 385.

INCESTOUS MARRIAGES, ii. 68.

INDEPENDENT GAZETTEER, advertisements in, iii. 161.

## INDIANS.

The commonwealth has the exclusive right of purchasing lands from them, (V) i. 390, 420.  
Warrants not to be located on their lands, i. 411.  
Kentucky settlement claims on, void, iii. 308.  
Their claim to land, act respecting, iv. 108.  
Their lands protected, iv. 229.  
Indian treaty, agent may be appointed to, iv. 108.

INDIANA TERRITORY, lawyers from, forbid to practice in Kentucky, iii. 508.

## INDICTMENTS.

Various regulations respecting, iii. 290, &c.  
May be found in part and be good, iii. 293.  
Against persons for stabbing, shooting or wounding, how and when to be preferred, iv. 78.

INFANCY, not to delay certain actions, i. 128.

## INFANTS.

Their estates, &c. i. 674, &c.  
Limitation of actions not to run against, i. 381, 383.  
Limitation of writs of error not to run against, i. 564.  
How division and conveyance of their lands may be obtained, i. 692, iii. 18.  
May sue by their next friends, ii. 63.  
Not chargeable with interest, (E) ii. 540.  
Infants, recognizance of, iii. 294.  
Not to be employed to run races, iv. 37.  
Their interest protected in sales of land for public debt, iii. 482, iv. 107.

INFORMANT, advertisements in, iii. 301.

## [INF]

## INDEX.

## [INS]

**INFORMERS, COMMON**, various regulations respecting them, (*E*) ii. 531, &c.

**INFORMATIONS**, for penal offences, how to be prosecuted, i. 473, iii. 290, &c.

**INFORMALITIES**, not to affect suits, iv. 260.

**INJUNCTIONS:**

How obtainable, i. 527.  
From an inferior, not to enjoin proceedings of a superior court, ii. 221.  
Jurisdiction of courts respecting, restricted, ii. 221.  
Affidavit to be made before the court or a judge of it, ii. 221.  
Bond in, ii. 222.  
Ten days notice of, ii. 222.  
Copy of the bill to be left with the notice, [repealed] ii. 295.  
Not to extend beyond the complainant's equity, ii. 295.  
Release of errors at law required prior to obtaining, ii. 295.  
Affidavits in support of, ii. 295.  
No notice necessary on application for, in court, or in land cases out of court, ii. 405.  
May be granted by district judges to operate throughout the state, ii. 405.  
May be awarded by a single judge or justice in alimony cases, ii. 410.  
How obtainable in the circuit courts, iii. 43.  
No appeal or writ of error to lie on dissolution of, on motion, iii. 498.  
Dissolution motion, may be reinstated by a judge of the court of appeals, iii. 498.  
Against suits brought in the general court on false suggestions, iii. 214.

**INLAND NAVIGATION**, county courts to cause navigable streams to be kept open, (*V*) ii. 582.

**INLAND BILLS OF EXCHANGE**, law respecting, ii. 103.

**INNS AND INNKEEPERS.**

Law at large respecting, i. 194, &c.  
List of innkeepers to be laid before the grand jury, iii. 246.

**VOL. IV.**

**INROLMENT OF BARGAINS AND SALES**, English act for, ii. 496.

**INSPECTIONS AND INSPECTORS**,  
i. 135, 150, 258, 326, 330, 335, 369, 370, 379, 606—ii. 54, 137, 173, 196, 213, 232, 280, 281, 382, 391, 456—  
iii. 20, 123, 237, 321, 329, 437, 439, 526—iv. 13, 167, 398.

**INSPECTIONS.****ESTABLISHED BY VIRGINIA.**

At the mouth of Hickman, the Falls of Ohio, at Lees town, at Harrod's Landing, iii. 580.  
At the mouth of Hickman, at the mouth of the Beech Fork, at the mouth of Craig's creek, at Boonsborough, at Collier's, at Limestone, at the confluence of Hinkston and Stoner's Fork, iii. 582.  
At Walton's, at the mouth of Cartwright's creek, at the mouth of Stuart's creek, iii. 583.  
At Paris, at Frankfort, iii. 584.

**ESTABLISHED BY KENTUCKY.**

1792.

Inspectors of hemp, tobacco and flour to be appointed, and governed by the laws of Virginia, i. 135.  
All the warehouses in Clarke, to constitute one inspection, i. 135.  
Cleveland's and Stafford's to make one inspection, i. 135.  
Inspectors of tobacco at Cleveland's, Holder's, Stafford's and Bush's landings, i. 150.

1794.

Inspections of flour and hemp established in Washington, Jefferson, Harrison, Fayette, Mason, Franklin, Mercer, Bourbon, Logan, Woodford, Hardin and Nelson counties, where the county courts may direct, i. 258.

1795.

Of tobacco at Campbell's warehouse, suppressed, and one established at the mouth of Beargrass, i. 326.  
Of flour and hemp, established at Frankfort, Cleveland's, Stewart's creek, Mayville, Cynthiana, Louisville, Newport, mouth of

- Dick's river, Warwick, Holder's, Tate's creek, Scott's, Shepherdsville, Beall's, Doom's, Parker's and Paris, i. 330.  
1796.
- Bailey's, i. 369.
- Of hemp and flour, at the mouth of Green's creek, at Delany's ferry, mouth of Hickman, mouth of Jessamine, mouth of Brahear's creek, Boonsborough, Bedinger's, Riddle's, mouth of Bracken, mouth of Simpson's creek, i. 370.  
1797.
- Of flour and hemp, established at Hogan's, Davis's and Johnson's, i. 606.
- January Session, 1798.*
- Inspectors at the rapids of Ohio, their compensation, &c. ii. 54.
- Of tobacco, established at Hickman's, Curd's, Harrodsburg, Boone's, Biggerstaff's, Hogan's, Cleveland's, Holder's, Bush's and Beall's, ii. 139.
- At Stewart's, Walton's, Parker's, Scott's, Limestone, Paris, Bourbon, Frankfort, Louisville, Bailey's, Bedinger's, Bracken, Roundtree's, Bullittsburg, ii. 140.
- All former laws respecting the inspection of tobacco, repealed, ii. 161.
- Of flour, hemp and tobacco, established at Goggin's (Silver creek) and Falmouth, ii. 173.  
*November, 1798.*
- Of tobacco, at Weisiger's, ii. 196.
- Of flour, hemp and tobacco, at Port-William, Clay's, Quantico, Gath, Greensburgh, ii. 196.
- Of hemp, at Lexington, ii. 196.
- Of hemp, flour and tobacco, at Eddyville, ii. 213.
- Of tobacco, at Hinds's and at Doom's, ii. 213.
- Of flour and hemp, at East Frankfort, ii. 232.  
1799.
- Of tobacco, flour and hemp, at Froman's, Burkville, Lee's, Bryant's Lick, Hart's, May's, Henderson's, Berry's, Taylor's, ii. 278.
- At Westport, Swinney's, Chapman's, Burwell's, Shepherd's, Walton's, Stewart's, Crompton's, Bush's, Stone's, Watson's, South Frankfort, Beallsburgh, Fowler's, Jack's creek, ii. 279.
- At Newport, Landing run, Lee's creek, ii. 280.
- Of cordage, at Watson's, ii. 279.
- Of tobacco, hemp and flour, at Cox's creek, ii. 287.  
1800.
- Of tobacco, hemp and flour, at Huston's, Louisburgh, Storm's, Warwick, in Madison, Dowdal's, Ferguson's, Rolling Fork, Big Bone, ii. 383.
- At Woolper's, Barnett's, Louisville, Limestone, Pocahuntas, Campbell's and Stapp's and Drennon's creek, ii. 384.
- Of flour, hemp and tobacco, at Cole's, Funkhouser's, Hay's, Beatty's, Westpoint, Ellis's, Prestonville, Campbell's and Stapp's, Garriss's, ii. 456.  
1801.
- At Hunsaker's, Hardin's, Sullinger's, White's, Coleman's, Miller's, Flournoy's, and Allen's, ii. 457.  
1802.
- At Dickens's, Buckhannon's, Gullion's, Jackson's, iii. 23.
- Montgomery's, Newmarket, Lusk's, Pond river, Robinson's, Embree's, iii. 24.  
1803.
- At Trumbo's, Willoughby creek, West point, Taylor's, iii. 123.
- At Maberry's, Kirkpatrick's, iii. 124.  
1804.
- County courts to appoint inspectors, iii. 237.
- Inspections established at Mayville, Augusta, Lower Blue Licks, Newport, Port-William, Louisville, mouth of Clover, Henderson town, mouth of Cumberland, Frankfort, Greensburg, Stewart's creek, mouth of Hickman, Curd's, Sugar creek, Falmouth, Greasy creek, mouth of Beaver, Doom's, Bush's landing, mouth of Salt river, Beallsburgh, mouth of Sinking, Jack's creek, Boonesborough, iii. 239.
- At Greasy creek, iii. 242.
- At Jackson's, Doran, Indian creek, Montgomery's, Throckmorton's, Falmouth, Davis's, Forsythe's, Gallatin's, iii. 243.  
1805.
- Of flour, hemp, tobacco, beef and pork, at

Hoagland's, Falling Spring, Russell's creek, iii. 322.  
 At Dorin's, Warwick, Howard's, Drawing creek, Goggin's, Lewisburg, Graves's, Herndon's, Anderson's, Bay's fork, Curd's, Georgetown, Debrill's, Hartford, iii. 323.  
 At Taylor's, Beaver creek, M'Neal's, Hart's, Cedar creek, Red river, iii. 324.  
 1806.  
 At Jack's creek, Benfon, Little Barren, Vanceburgh, Little Sandy, Glover's creek, Green river, M'Conn's, Rough's run, Randolph's, iii. 332.  
 At Newton's, iii. 337.  
 At Rife's, iii. 385.  
 1807.  
 At Wilkins's, iii. 437.  
 At Smart's, iii. 439.  
 At Tate's creek, Haydon's, Tonsey's, Andrew's & Hedrick's, Green river, Barnes's, Williams's, Ellis's, Pond river, iii. 451.  
 At Mill creek, Stephens's, iii. 452.  
 May be established by county courts, iv. 13.  
 Laws concerning, amended, iv. 167.  
 At Louisville, law establishing, repealed, iv. 398.

INSPECTORS OF THE PENITENTIARY, the governor made sole inspector, iii. 400.

#### INSURANCE COMPANY.

Incorporated, iii. 25.  
 Act of incorporation repealed in part, iii. 213.

#### INSOLVENT DEBTORS.

How to be discharged from imprisonment, i. 547.  
 Counties discharged from paying for their maintenance, iv. 387.

INSURRECTION, conspiracy by slaves to make, punishable with death, iv. 223.

#### INTEREST.

Rate of legal interest, ii. 45.  
 Penalty on taking more than legal interest, ii. 45.

What writings shall bear interest, ii. 381.  
 Mode of adjusting interest where partial payments have been made, ii. 280.  
 Infants not to be charged with interest, (E) ii. 540.  
 Ten per cent. on protested foreign bills of exchange, ii. 101.  
 Of eighteen per cent. against defaulting sheriffs, iii. 310.  
 Of one hundred per cent. on redeeming lands sold for taxes, iii. 335.  
 Given on judgments in certain cases, iv. 394.

IRON WORKS, erection of, in Bath county, iv. 366.

IRVINE, town of, established, iv. 339.

#### ISSUES.

In suits, when and how to be made up, iv. 177.  
 May be compelled to be completed, iv. 180.

#### JAILS.

Public jail to be erected, i. 263.  
 Jails to be built by county courts, i. 375.  
 County courts discharged from supporting debtors committed to, iv. 387.

#### JAILORS.

District, to be appointed by the governor, i. 317.  
 To be appointed by county courts, ii. 294.  
 Of county courts, to be jailors of circuit courts, iii. 89.  
 How removable from office, iii. 69.  
 Their allowance for attending circuit courts, iii. 90.  
 County courts to make an allowance to, out of the levy, iii. 242.  
 Jailors' fees in case of runaways, ii. 6.  
 May take bail, iv. 386.  
 May take bonds for prison rules, iv. 387.  
 When committed to jail, sheriff to act as jailor, iv. 387.  
 To give bond, iv. 387.  
 Their compensation for maintaining fugitives from justice, iii. 501.

## JAIL AND PENITENTIARY.

- To be built, ii. 15.
- Money appropriated to directors of, ii. 263.
- Governor to appoint inspectors to, and various regulations respecting, ii. 447.
- Various regulations respecting, iii. 70, 240, 298, 399.
- Governor to be sole inspector of, iii. 399.

## JEFFERSON COUNTY.

- Boundaries of, i. 626.
- Part of, added to Bullitt, iv. 219.

## JEFFERSON SEMINARY.

- Endowed, ii. 108.
- Trustees of, to raise a sum of money by lottery, ii. 208.
- Additional trustees appointed to, ii. 378.
- Last act respecting it explained, ii. 429.

## JEFFERSON.

- Town of, trustees appointed to, ii. 379.
- Act concerning, iv. 31.

## JEFOAILS.

- The English statutes of jeofails passed prior to 1753, extended to Virginia, (V) i. 486.
- The English statutes of jeofails arranged in chronological order, i. 486 to 488.
- Parts of Virginia acts of jeofails in civil suits remaining in force here, i. 485-6.
- Parts of Virginia acts of jeofails in penal prosecutions remaining in force, i. 464-5.
- The act of jeofails of 1796, i. 499.
- Act of jeofails of 1799, ii. 311.
- Act of jeofails of 1810, iv. 259.
- In criminal prosecutions, iii. 293.

## JESSAMINE COUNTY.

- Formed, ii. 213.
- Act establishing it amended, ii. 297.

JOINT TENANTCY, *jus accrescendi* abolished in, i. 510.

## JOINT TENANTS.

- How they may obtain partition, i. 510, iv. 240.

In what cases one joint tenant may carry on a suit alone, ii. 402.

JOINT OBLIGATIONS, how suits may be brought on, i. 510.

## JOINT ACTIONS.

- May be brought against heirs or devisees and personal representatives, i. 123.
- Against heirs and devisees, i. 598.
- Against justices for a fine, i. 475.

## JOINT OBLIGORS.

- How they may be sued in the district courts, i. 302.
- How, in quarter session courts, i. 353, 506.
- How judgment may be obtained against, iv. 384.

JOINT DEFENDANTS, in all personal actions, proceedings against, iv. 384.

## JUDGES.

- In what cases their salaries shall be subject to deduction, ii. 416, iv. 21.
- Duties of clerks respecting it, ii. 416, iv. 21.

## JUDGMENTS.

- On gaming consideration, void, ii. 103.
- Confession of, authorised, ii. 336.
- Confession of, when not to be made by executors and administrators, iv. 270.
- To bear interest in certain cases, iv. 394.

## JURIES, GRAND.

- Acts respecting, i. 468, 470, iv. 267.
- Justices of the peace exempted from serving on, iii. 242.

## JURIES, PETIT.

- Laws respecting, i. 475, 476, iv. 84, 261.
- No member of a grand jury who formed the indictment, shall be on the petit jury who tries it, (E) ii. 543.
- May be fined less than eight dollars for failing to attend, iv. 84.
- Oath of, changed, iv. 261.



Justices of the peace exempted from serving on, iii. 242.  
 No transient person compellable to serve as a petit juror, iii. 402.  
 Physicians, surgeons and ministers of the gospel not compellable to serve as petit jurors, iii. 402.  
 Peremptory challenge of four allowed to each party, iii. 402.

## JURISDICTION.

In what case consent of parties shall give jurisdiction, ii. 401.  
 Concurrent, given to both counties on the dividing lines of counties, iii. 439.

## JUSTICES OF THE PEACE.

Their appointment, fees, &c. i. 90, 112, 124, 149, iii. 295, 376, iv. 343.  
 Their jurisdiction, i. 90, 374, iv. 342.  
 Each to keep a record, i. 125, iv. 343.  
 Discounts to be allowed in trials before, i. 204.  
 Penalty on, for giving out blank summons, i. 218, iii. 48.  
 For extortion, iii. 296.  
 Additional number allowed in several counties, iii. 82, 143, 186, 308, 343, 529, iv. 16, 119, 270, 332.  
 Act limiting their number in the several counties, ii. 444, 529, iv. 141.  
 By becoming sheriffs, cease to be justices of the peace, ii. 437.  
 Cannot act as coroners, ii. 437.  
 Removal of, to be recorded in the secretary's and clerk's office, ii. 89.  
 To take rank according to the date of their commissions, ii. 466.  
 Not to practice as attorneys in their own courts, iii. 304.  
 To give copies of records in their possession, iii. 376.  
 Have jurisdiction in demands reduced below five pounds, iii. 503.  
 Have jurisdiction of demands payable in property, iii. 503.  
 Their duty in cases of attachment for rent, ii. 505.  
 Their duty in cases of attachments against absconding debtors, i. 595, iii. 239.

Their duty in cases of distress for rent, iv. 271.  
 Their duty in relation to taverns, i. 196.  
 In relation to strays, ii. 77.  
 In relation to runaways, ii. 5.  
 Exempted from serving on juries, iii. 242.  
 To perform certain duties appertaining to sheriffs, when, iii. 292.  
 The law respecting recovering debts before them amended, iv. 35.  
 In what cases they may examine the litigants on oath, iv. 35.  
 Their jurisdiction increased, and various regulations respecting it, iv. 342.  
 Their duty as to vagrants, i. 288.  
 Required to see the act against vagrants put in execution, i. 291.  
 Their duty in cases of bastardy, i. 282.  
 As to riots, iii. 55.  
 In respect to offending slaves, ii. 113, 215, 417, iii. 403, iv. 69, 223.  
 Their duty in prosecutions for forcible entry and detainer, iv. 182.  
 May take bail in criminal prosecutions, iii. 242, iv. 67.  
 Their duty in criminal prosecutions, iv. 67.  
 To take down the evidence in writing, iv. 68.  
 Their duty in cases of stabbing, shooting and wounding, iv. 78.

JUSTICE, CHIEF, process not to run in his name, iv. 171.

## KEEPER OF THE PENITENTIARY.

His appointment, ii. 24.  
 His salary, ii. 301.  
 To give bond to the governor, iii. 76.  
 May issue warrants to retake convicts, iii. 73.  
 May offer rewards and employ persons to go in pursuit of, ii. 73.  
 To have no power over the agent, iii. 299.  
 His powers and duties, iii. 299, 400, &c.

## KEEPER OF THE TURNPIKE.

## ON THE WILDERNESS ROAD.

His appointment, &c. i. 688-9.  
 John Thurman appointed keeper for seven years, ii. 162.  
 Governor to let it to a keeper for five years, ii. 266.

# KEE ]

# INDEX.

# [LAN

Keeper to give bond and security, ii. 267.  
To be appointed by the governor, and various duties enjoined on him, iii. 52, &c. 211, 283, 286, iv. 55, 242, 264.

ON THE ROAD FROM THE MOUTH OF TRIL-  
LETT TO SANDY.

His appointment, bond and duties, iv. 154, 235.

KEEPING GAMING TABLES, ii. 481.

KENTUCKY COUNTY, boundaries of,  
(V) i. 626.

KENTUCKY HERALD, advertisements  
may be printed in, i. 693.

KENTUCKY TELEGRAPH, advertise-  
ments may be printed in, ii. 228.

## KENTUCKY RIVER.

Acts to improve its navigation, ii. 448, iv.  
210, 243, 318.

Ferries across, i. 348, ii. 231, iii. 558, 561,  
585, 586.

Martin Hawkins allowed to build a mill on  
it, on certain conditions, iii. 120.

South fork of, act for improving its naviga-  
tion, iv. 94.

KENTUCKY INSURANCE COMPA-  
NY.

Incorporated, iii. 25.

Part of the act incorporating it repealed, ii.  
213.

## KENTUCKY BANK.

Established, iii. 390.

Duty of the president respecting the state's  
dividend, iii. 452.

## KENTUCKY ACADEMY.

Established, i. 228.

Its trustees, &c. ii. 164.

United to the Transylvania seminary, ii. 234.

## KENTUCKY SEMINARY.

Established, ii. 388.

Act establishing it amended, iii. 1.

Trustees appointed to, iv. 319.

KENNEDYSVILLE, town of, established,  
i. 341.

## KNOX COUNTY.

Formed, ii. 298.

An election precinct formed in, iv. 205.

Allowed further time to appropriate seminary  
land, iv. 251.

LAMP, advertisements may be printed in,  
iii. 437.

## LAND LAW OF VIRGINIA.

Prior to 1779, i. 385 to 392.

From 1779 to 1791, inclusive, i. 392 to 406.

Titles confirmed by Virginia, i. 392-3.

Claims declared void by Virginia, i. 393.

Settlement and pre-emption claims to land, i.  
395 to 406.

Land-office established by Virginia, i. 406.

Treasury warrants for land, how obtainable,  
i. 408.

Entries, how to be made, i. 410.

Surveys, how to be made, i. 410.

When to be made, i. 413, 451, 454.

Lands granted for military services under the  
old government, i. 392.

For military services under the new govern-  
ment, i. 407, 422, &c.

Granted on poor rights, i. 430.

LAND-OFFICE, constituted in Kentucky,  
and various regulations respecting, i. 75,  
159, 174, 216, 368, ii. 220.

## LANDS.

Selling of, for debt, i. 128, 670, ii. 334, iv.  
278.

Of sheriffs, liable to sale by execution in cer-  
tain cases, (V) ii. 526.

Sale of, by sheriffs, when and where to be had,  
iv. 278.

Covinous, may be set aside on motion, iv. 278.

Lands, title papers of, to be procured from  
Virginia, i. 652, ii. 121.

Pre-emption of, i. 554.

## [ LAN ]

## INDEX.

## [ LAW ]

Division and conveyance of, i. 690, iii. 18, 460, iv. 238.  
 Conveyance of, i. 565, iii. 18, iv. 164, 238.  
 Vacant, how to be appropriated, ii. 420, 459, iii. 132, 360.  
 Appropriated to seminaries of learning, boundary of the tract, ii. 109.  
 Of officers and soldiers, boundaries of, i. 411, ii. 182.  
 Time of lifting for taxation prolonged, iv. 5, 218.  
 Granted to settlers south of Green river, and various provisions respecting, i. 350, 682—ii. 91, 263, 272, 337, 381, 420, 455—iii. 60, 79, 142, 151, 175, 196, 406.  
 Claims, an act to compel the adjustment of, iv. 55.  
 Act to prevent the fraudulent appropriation of, iv. 71.  
 Occupying claimants of, act in their favor, i. 642.  
 Act of 1811 in their favor, iv. 345.  
 Certificates for, auditor may correct mistakes in, iv. 367.  
 Titles, relinquishment of, to the state, i. 222, ii. 326, 435.  
 Forcible entry and detainer of, the law at large respecting, iv. 182.

## LANDS OF NON-RESIDENTS.

Sold in 1806, time allowed to redeem, iv. 12.  
 Sold for taxes, further time given to redeem them, iv. 174, 218, 351.  
 Femer covert may convey, under powers of attorney, iv. 363.  
 Lands granted by Kentucky, certificates for, where to be entered and surveyed, iv. 349.  
 Lands vested in trustees to encourage manufactures, ii. 290.

## LANDS, SALE OF.

For public debt, iii. 386, 478.  
 Suspended, iv. 14, 118, 333, 246.  
 Sold to the state, when redeemable, iv. 118.  
 Sale of, when to commence, iv. 118, 246, 334.  
 Actual settlers, a provision in their favor, iv. 334.

Interest of infants protected in sale of, iii. 482, iv. 107, &c.  
 Distinction between actual settlers and others, iv. 247.

## LANDS ACQUIRED BY THE TREATY OF TELlico.

How they may be appropriated, iv. 167.  
 And Highwaste, to be entered for taxation, iv. 219.  
 Amendatory acts respecting the appropriation of Tellico lands, iv. 258, 404.

LAND MEASURE, the computation of inches, feet, yards, perches and acres; (E) ii. 572.

## LANDS, TAXATION OF.

First act for, i. 63.  
 Act of 1793 respecting, i. 211.  
 Act of 1794 respecting, i. 265.  
 Act of 1795 respecting, i. 321.  
 Act of 1796-7 respecting, i. 653.  
 Act of 1798 respecting, ii. 55.  
 Act of 1799 respecting, ii. 316.  
 Act of 1801 respecting, ii. 462.  
 Act of 1802 respecting, iii. 83.  
 Act of 1803 respecting, iii. 157.  
 Act of 1804 respecting, iii. 192.  
 Act of 1805 respecting, iii. 309.  
 Acts of 1806 respecting, iii. 335, 404, 408.  
 Acts of 1808 respecting, iv. 5, 12.  
 Act of 1809 respecting, iv. 174.  
 Act of 1810 respecting, iv. 218.  
 Act of 1811 respecting, iv. 351.

LANCASTER ACADEMY, incorporated, ii. 242.

LANCASTER, town of, act concerning its trustees, ii. 172.

LARCENY, laws against, ii. 12, 13, 471, 477, iii. 63.

## LAWS.

What to be in force in Virginia, (V) i. 390.  
 Governor directed to distribute copies of, i. 682, ii. 183.

## LAW ]

## INDEX

## [ LIM

Acts declaring when they shall commence, i. 385, 508, 672, ii. 208, iv. 136.  
Omission in a former act supplied, i. 672.  
Copies of, to be exchanged, iv. 64.  
Of the United States, to be bound, iv. 65.  
Littell's edition of, may be purchased by the county courts, iv. 316.

### LAW, COMMON.

Extended to Virginia, i. 390.  
Revived as to riots, &c. iv. 80.

### LAW, SUITS AT.

Act concerning, iv. 175.  
Amendatory act concerning, iv. 259.

LEAP YEAR, the two last days in February to be reckoned as one in leap year, (E) ii. 570.

LEASES & LEASEHOLD ESTATES, (E) ii. 497.

LEBANON ACADEMY, established, iv. 193.

LEGAL CONSTRUCTION, rules of, changed, (V) i. 385, ii. 208.

### LEVIES.

General act concerning, i. 672.  
Provision where county courts fail to lay them at the proper term, iv. 217.  
Deficiency in one year to be supplied the next, iv. 218.

LEWISBOROUGH, town of, established, i. 295.

### LEWIS COUNTY.

Formed, iii. 338.  
Academy established in, iv. 17.  
Election precinct formed in, iv. 224.

### LEXINGTON.

Town of, established, (V) iii. 549.  
Trustees allowed to sell part of a public lot, (V) iii. 550.

Act concerning, certain regulations in, (V) iii. 551.

Acts regulating it, i. 110, 127, 221, 343, 573—ii. 171, 363—iii. 35, 207, 411—iv. 243.

LIBERTY ACADEMY, incorporated, iv. 114.

### LIBRARY COMPANIES.

Lexington, Danville and Georgetown, incorporated, ii. 375.  
Lancaster, incorporated, iii. 208.  
Paris, incorporated, iii. 455.  
Shelby, incorporated, iv. 89.  
Lexington, Georgetown and Danville, amendatory act concerning, iv. 157.  
Winchester, incorporated, iv. 195.  
Washington, incorporated, iv. 273.  
Verfaillies and Washington, incorporated, iv. 357.  
Frankfort, incorporated, iv. 359.  
Lexington, act concerning, iv. 280.

### LICKING.

South and Stoner's forks of, navigation, i. 192—ii. 210, 315, 454—iii. 32, 193, 354—iv. 222, 331.  
Main, i. 227, ii. 314, iii. 8, 258, 366.  
Mill-dams allowed to be built on, under certain restrictions, iii. 258, 366.  
South fork of, bridge on, at Cynthiana, iv. 97.

### LIMITATION.

Of civil suits generally, i. 380.  
On merchants' accounts, i. 382.  
Of penal suits and prosecutions, i. 475, ii. 62.  
Of writs of error, i. 564.  
Of writs of error *coram vobis*, iii. 92.  
Of actions by persons held in bondage, iii. 484.  
Of actions against actual settlers, iv. 56.  
To inquisitions of forcible entry and detainer, iv. 185.  
Of motions against sheriffs, iv. 278-9.  
Of writs of error in caveats, iv. 284.  
Act of limitations not to apply to penitentiary offences, iii. 241.

## LINCOLN COUNTY.

Boundaries of, i. 626. —  
 Proceedings of its surveyor legalised, ii. 19a.  
 Divided into election precincts, ii. 400.  
 Part of it added to Garrard, ii. 461.  
 Part of it added to Mercer, iv. 8.

## LISTS OF TAXABLE PROPERTY.

Mode of taking in, altered, iv. 159.  
 Part of the former act respecting, repealed,  
 iv. 207.  
 Amendatory act respecting, iv. 261.  
 Law altering the mode of taking in, amended,  
 iv. 420.

## LITTLE RIVER.

Act to keep it open, iv. 206.  
 Act respecting its navigation repealed, iv.  
 336.

## LIVINGSTON COUNTY.

Formed, ii. 198.  
 Election precinct established in, iv. 331.

LIVERY, a woman at the age of 14 shall  
 have livery of her lands, (E) ii. 495.

LOCAL ACTIONS, writs in, may issue to  
 any county, iv. 383.

## LOCATIONS.

On Virginia warrants prohibited, i. 165.  
 By trustees of academies, not to be on settled  
 lands, ii. 357.

## LOGAN COUNTY.

Boundaries of, i. 636.  
 A line of, established, ii. 177.  
 Proceedings of its quarter session court legalised, ii. 361.

## LOTTERIES.

Prohibited, (V) ii. 563.  
 Lottery to improve the navigation of Kentucky, iv. 210, 243.  
 Amendatory act concerning, iv. 318.

## VOL. IV.

## LOUISVILLE.

Established, (V) iii. 540.  
 Sale of lots in, suspended, (V) iii. 542.  
 Part of the act establishing it repealed, (V)  
 iii. 542.  
 Last act amended and explained, (V) iii. 543.  
 Time given to build in, (V) iii. 545.  
 Sale of lots directed, (V) iii. 545.  
 Further time given to build in, (V) iii. 546.  
 Additional trustees appointed, (V) iii. 547.  
 Amendment and explanation of former acts,  
 (V) iii. 547.  
 Relinquishment to John Campbell, of lands  
 contiguous to, (V) iii. 548.  
 Acts concerning it, i. 184, 325, 604, ii. 370,  
 432, iv. 395, 398.  
 Inspection of tobacco at, discontinued, iv.  
 398.

LOUISVILLE GAZETTE, advertisements in, iii. 530.

LUMINARY, advertisements may be printed in, iv. 203.

## LUNATICS.

Their estates to be preserved, (V) ii. 577.  
 How the fact of lunacy is to be ascertained,  
 (V) ii. 578, i. 191.  
 Their funeral expenses to be paid by the public,  
 iii. 169.

## MADISON COUNTY.

Boundaries of, i. 629.  
 Its seat of justice, ii. 165.  
 Part of it added to Garrard, ii. 270.  
 Part of it added to Knox, iii. 182.  
 Hemp mill company incorporated, iii. 532,  
 iv. 74.

MADISONVILLE, town of, act regulating,  
 iv. 319.

MAGISTRATES, see Justices of the Peace.

MAIL, process may be sent by, iv. 278.

MAIMING, how punished, ii. 13, 467.

**MAIN LICKING**, i. 227, ii. 314, iii. 8, 258, 366.  
**Mill dams** allowed to be built on, iii. 25, 366.

**MAINTENANCE**, grants made in consideration of, void, (E) ii. 544.

**MALICIOUS PROSECUTIONS**, action for, (E) ii. 516.

**MANDAMUS.**

**Court of appeals** may award, i. 104.  
**District courts** may award, i. 478.

**MANSLAUGHTER**, ii. 13, 14, iii. 68.  
 Voluntary, by slaves, free negroes and mulattoes, punished capitally, iv. 224.

**MANUFACTURING BANK PAPER**, iii. 65.

**MARRIAGES.**

**What to prevail against pre-contracts**, (V) ii. 571.  
**White persons marrying negroes or mulattoes**, punishment for, (V) ii. 571.  
**How they may be solemnized**, ii. 64.  
**Within certain degrees prohibited and to be annulled**, ii. 68.  
**On what authority clerks may issue marriage license**, ii. 275.  
**County courts may license magistrates to marry, under certain circumstances**, ii. 275 6.  
**Marriage pending suit to be entered on the record**, iv. 387.  
**Contract, renunciation of**, iv. 407, &c.

**MASTERS**, their duties towards apprentices and powers of county courts over, i. 375, 677.

**MASON COUNTY.**

**Boundaries of**, i. 628.  
**Authorized to appoint a collector**, ii. 191.

**MAYSVILLE.**

**Town of, established**, (V) iii. 565.

**Time given to improve lots in**, i. 240.  
**Racing and shooting in**, prohibited, i. 651.  
**Acts concerning**, iii. 104, 290, 466, iv. 126.

**MEASURES.**

**Several English and one Virginia act respecting**, ii. 573 to 575.  
**Capacity of some, by a Kentucky act**, ii. 194.  
**Duties of county courts and the secretary respecting**, ii. 301.

**MELIUS INQUIRENDUM**, when to be awarded, (E) ii. 520.

**MERCER COUNTY.**

**Boundaries of**, i. 628.  
**Part of Lincoln added to it**, iv. 86.

**MIDDLETOWN**, acts concerning, ii. 458, iv. 98, 331.

**MILEAGE.**

**Of the sergeant of the court of appeals**, iv. 82, 419.  
**To the party on vexatious notices to take depositions**, iv. 337.

**MILFORD.**

**Town of, established**, (V) iii. 567.  
**Better regulated**, i. 225.

**MILITARY LANDS**, protected, iv. 229.  
 [See Land.]

**MILITIA LAW.**

**Revised and amended**, iv. 284 to 316.  
**All former militia laws repealed**, iv. 284.

**MILLS**, how to proceed to obtain leave to build, i. 606, &c. iii. 9, iv. 148.

**MILL-DAMS.**

**The general law respecting**, will be found in the law respecting mills, i. 606, &c. iii. 9.  
**On the South fork of Licking**, prohibited, i. 193.

## [MIL]

## INDEX.

## [NAV]

Allowed to be built under certain restrictions, ii. 315, 454.  
 Further indulgences given, and many regulations respecting, iii. 32, 195, 354, iv. 223, 331.  
 Allowed to be built on main Licking, under restrictions, iii. 258, 366.  
 On the Beech fork, prohibited, ii. 312.

MINISTERS OF RELIGION, not compellable to serve on petit juries, iii. 402.

MIRRORS, (newspapers) advertisements may be printed in, ii. 228, iii. 192, 333.

## MONEY.

Not to be drawn from the treasury unless expressly directed by law, ii. 380.  
 Out money, acts respecting, iv. 45, 199.  
 Fraudulently drawn from the treasury, acts for recovery of, iv. 74, 188.

MONKS, not compellable to muster, iii. 216.

## MONTGOMERY COUNTY.

Formed, i. 366.  
 Act forming it amended, ii. 206.

MONTGOMERY ACADEMY, act concerning, iv. 243.

MONTICELLO, town of, acts regulating, iv. 119, 201.

MORGANFIELD, town of, act regulating, iv. 319.

## MOTIONS AGAINST SHERIFFS.

By the treasurer and public and county creditors, i. 83, 581-2.  
 For failing to pay over money collected on execution, i. 141, 551, ii. 436, iv. 276.  
 For failing to return a forthcoming bond, i. 208, 544.  
 For failing to return an execution, i. 551.  
 Without notice for failing to pay revenue, iii. 310.  
 For failing to pay fees, i. 590.

For failing to return executions, pay money, &c. iv. 276, &c.

Time of making, limited, iv. 277, 279.

MOTIONS AGAINST CLERKS, without notice, for failing to pay revenue, iv. 311.

MOTIONS AGAINST CONSTABLES, iii. 128, 130.

## MOTIONS AGAINST ATTORNEYS.

By their clients, for money received, ii. 441.  
 For fees paid, where the duty has been neglected, iii. 216.

## MOTIONS.

By securities against their principals, ii. 37, iv. 341.

By securities against co. securities, ii. 38, iv. 341.

Motions to quash executions, forthcoming and replevin bonds, within what time to be made, iii. 92.

Notice of, required, iii. 92.

To set aside covinous sales of land, iv. 278.

## MOUNTSTERLING.

Established, i. 125.  
 Amendatory act concerning, iii. 352.  
 Trustees of, may lay an additional tax, iv. 234.

MUD RIVER, navigation of, to be improved, iv. 115, 338.

## MUHLENBERG COUNTY.

Formed, ii. 205.  
 Act forming it amended, ii. 378.

MURDER, ii. 11, 12, 467, iii. 68.

MUTUAL ASSURANCE SOCIETY, incorporated, &c. iv. 253, 375.

NAVIGABLE STREAMS, general act respecting, i. 121.

## NAVIGATION.

Inland, duty of county courts respecting, (N) ii. 582.

## NAV]

## INDEX.

## [NOT

Of main Licking, i. 227, ii. 314, iii. 8, 258, 366.  
 Of the South and Stoner's forks, i. 192, ii. 210, 315, 454, iii. 32, 193, 354, iv. 94, 222, 331.  
 Of Kentucky river, ii. 448, iv. 210, 243, 318.  
 Of the Beech fork, ii. 489, iii. 80, 314.  
 Of Red river, iii. 249.  
 Of Green river, iii. 467, iv. 30, 208, 338.  
 Of Salt river, iii. 490.  
 Of Mud river, Big Barren, Rough creek and Pond river, iv. 115, &c.  
 Of Big Barren river, act for its improvement, iv. 198.  
 Of Little river, to be kept open, iv. 206.  
 Of Green river, amendatory act, iv. 208.  
 Of Nolin, act respecting, iv. 220.  
 Of Little river, act respecting it repealed, iv. 336.  
 Of Green and Mud rivers, iv. 338.  
 Of Drake's creek, to be kept open, iv. 361.

## NE EXEAT.

How writs of, may be obtained, i. 527.  
 Security in, and what shall not be a violation of, ii. 404.  
 Writs of, from the circuit courts, iii. 43.

## NEGROES.

Free, and mulattoes, their migration prohibited, iii. 499.  
 Conspiring to rebel, shall suffer death, iv. 224.  
 Guilty of voluntary manslaughter, to suffer death, iv. 224.

NELSON COUNTY, boundaries of, i. 627.

NEWCASTLE LIBRARY COMPANY, incorporated, iv. 35.

NEW-MARKET, established, (V) iii. 539.

NEWSPAPERS, see advertisements.

NEWPORT, established, i. 280.

NEWPORT ACADEMY, incorporated, ii. 240.

NEWTOWN, (in Jefferson) established, i. 233.

NEWTOWN, (then in Mason) established, i. 285.

NEWTON, (in Nicholas county) act respecting, iv. 8.

NEWTON ACADEMY, incorporated, ii. 241.

NICHOLAS COUNTY, formed, ii. 366.

NICHOLASVILLE, trustees of, may sell real property in, iv. 417.

## NONAGE.

Inquest not to be delayed on account of, (E) ii. 508.

Certain suits not to be delayed on account of, i. 128.

## NONSUIT.

Damages and costs in, i. 638.

In appeals, ii. 226.

When it may be entered, iv. 180.

In what cases plaintiffs shall not be compelled to suffer, iv. 260.

NONTENURE, of parcel, shall not abate the whole writ, ii. 87.

## NON-RESIDENTS.

To enter their lands with the auditor, i. 663. (See Lands).

Executors and administrators, on what conditions they may prosecute suits, iv. 338.

Femes covert may convey their lands by power of attorney, iv. 363.

## NOTARIES PUBLIC.

Their appointment, bond and duty, ii. 41.

Their certificates to prove themselves, iv. 332.

## NOTICES.

What shall be legal, (V) i. 485.

Sheriffs and constables may serve notices of, specially, iii. 458.



## [NOT]

## INDEX.

## [PAR]

On taking depositions in chancery, i. 526.  
 On taking depositions to perpetuate testimony, i. 555.  
 On applications for injunctions, ii. 222.  
 On motions by plaintiffs to quash executions, iii. 59.  
 On motions by defendants to quash executions, forthecoming and replevin bonds, iii. 92.  
 On applications for writs of error *coram vobis*, iii. 92, 120.  
 Where notice for taking depositions may be given to the attorney at law, i. 526.  
 In what cases notices may be left in the clerk's office, ii. 222.  
 Vexatious, to take depositions, to subject the party giving, to mileage, iv. 337.

## NUISANCE.

Writ of, (*E*) ii. 510.  
 What shall be deemed a nuisance, i. 638.

## OATH.

On applications for injunctions, to be taken before the judge, ii. 221.  
 May be administered by the clerk, ii. 370.  
 To obtain marriage licence, may be administered by the clerk, ii. 370.  
 See affidavit.

## OBLIGORS.

Joint, actions against, in district courts, i. 302.  
 In quarter session courts, i. 353, 506.  
 How judgments may be obtained against, iv. 384.

## OCCUPYING CLAIMANTS.

Act of 1797 in their favor, i. 641.  
 Act of 1811 in their favor, iv. 345.

## OFFICERS.

Must reside in their counties, i. 167, 211.  
 Their fees, i. 88, 155, 167, ii. 246, &c.  
 Being candidates, when to resign, ii. 396.  
 Federal officers not to hold state offices, ii. 237.

Officers' fees, collection of, iii. 485.  
 Officers' bonds, to be payable to the commonwealth, iv. 123.  
 To be renewed every fifth year, iv. 123.  
 Bonds, recovery on, not to be limited by the penalty, iv. 212.

## OFFICES.

Not to be sold, (*E*) i. 578.  
 When they must be resigned by candidates, ii. 396.  
 Certain, declared incompatible, iii. 357.  
 Removal from office, acts respecting, ii. 355, iv. 186.

## OHIO COUNTY.

Formed, ii. 208.  
 Act establishing, correctly printed, ii. 289.  
 Part of it added to Henderson, iv. 10.  
 Election precinct formed in, iv. 416.

OHIO STATE, attorneys from, not to practice in Kentucky, iv. 59.

## OHIO RIVER.

Ferries may be established across, iii. 361.  
 Counties bounded by, to extend to the north-west bank, iv. 149.

OHIO CANAL, acts respecting, iii. 221, 259, 373.

## OUTLAWRY.

May be avoided by averment, (*E*) ii. 518.  
 Proceedings to, in civil cases, (*P*) ii. 518.

PALLADIUM, advertisements may be printed in, ii. 228.

## PARIS.

Town of, established, [by the name of Hopewell] (*P*) iii. 568.  
 Act establishing it amended, (*P*) iii. 569.  
 Its name changed to Paris, (*P*) iii. 570.  
 Acts respecting, i. 111, 188, 225, 356, 646, ii. 170, 466, iii. 343.

PARTITION, of estates, how to be obtained, i. 510, iv. 238.

**PAR.]**

**INDEX.**

**[PLE**

**PARTIALITY IN SHERIFFS**, punishment of, (*E*) ii. 340.

**PATENTS.**

For land, to issue in Kentucky on Virginia rights, i. 75.  
How obtainable under the Virginia land law, i. 405.  
Form of, i. 415.  
Patents for lands sold for taxes, ii. 286.  
Patents not to issue in certain cases without a special certificate from the surveyor, iv. 72.  
Declared void in certain cases, iv. 73, 229.  
How they may and may not issue, iv. 230.  
Not to issue pending caveats, iv. 282.

**PATROLLERS**, to be appointed by the county court and their duty, ii. 264.

**PEDLARS**, to obtain licence, iii. 342.

**PENAL LAWS.**

[*The crimes prohibited by the following acts, will be found in their proper places under their appropriate names.*]

Act of the first session of 1798, to amend, ii. 11.

Act of the second session of 1798, to amend, ii. 192.

Act of 1799, ii. 301.

Act of 1800, ii. 410.

Act of 1801, ii. 467.

Act of 1802, iii. 63.

Act of 1804, iii. 240.

Act of 1805, iii. 299.

**PENITENTIARY.**

[*The regulations respecting it will be found everywhere among the penal laws; the following acts have a more immediate reference to it.*]

Act of 1802 respecting, iii. 70.

Act of 1805 respecting, iii. 298.

Act of 1806 respecting, iii. 399.

Act of 1808 respecting, iv. 76.

To receive prisoners convicted of offences against the United States, iv. 80.

Act of 1809 respecting, iv. 49.

**PENAL PROSECUTIONS**, compounding of, ii. 477.

**PENDLETON COUNTY**, formed, ii. 197.

**PERJURY**, ii. 475.

Subornation of, ii. 475.

**PETITION AND SUMMONS**, 2d authorizing and regulating, iii. 319.

**PHYSICIANS**, not compellable to serve on petit juries, iii. 402.

**PLATTS AND CERTIFICATES OF SURVEY**, time given to return, i. 115, 173, 235, 288, 697—ii. 185, 287, 374, 429—iii. 119, 168, 330, 525—iv. 228.

**PLEAS AND PLEADING.**

The law in detail respecting, while there was a rule docket in suits at law, i. 481 to 500, ii. 401, 440, iii. 501.

Do. in chancery do. i. 519 to 528, ii. 221, 294, 403, 440, iii. 498, 502.

The law in detail respecting pleading in law and equity, since the abolition of the rule docket, iv. 175, 259.

Plea in abatement must be sworn to, i. 308, 498.

In writs of partition, not allowed, i. 511.

In real actions, what may be plead in, i. 492.

In chancery, when not allowed, i. 523.

In what stage of a cause not to be received, ii. 402, iv. 177.

Plea of *non est factum* to be on oath, i. 308, 498.

Plea denying a note to be on oath, ii. 440.

Denying an assignment to be on oath, iv. 385.

The plaintiff in replevin, and defendant in all actions, may plead as many matters of law as he pleases, i. 308, 498.

Plea impeaching the consideration of a bond, ii. 442.

Pleading discounts or sets-off, i. 204, 506, ii. 232.

Pleadings, time of filing to be endorsed, iv. 180.

Pleading, what shall be sufficient, iv. 260.

Defective, may be amended, iv. 260.

## [ PLE ]

## INDEX.

## [ REC ]

**PLENE ADMINISTRAVIT**, may be  
plead to an action for *deceit*, iv. 269.

**PLURIES**, to issue without order of court,  
iv. 175.

**POISON.**

Administering, felony, iii. 67.

By slaves, punishable with death, iv. 223.

**POLITICAL THEATRE**, advertisements  
may be printed in, iv. 53.

**POLIGAMY**, ii. 468.

**POOR.**

All former laws respecting, repealed, and  
new provisions made, i. 191.

Poor persons may sue in *forma pauperis*, ii.  
39.

Penalty on bringing to this state, ii. 87.

County court may employ physicians for, iii.  
133.

**PORT-WILLIAM.**

Established, i. 232.

Acts respecting, i. 340, ii. 337, iii. 250.

**POSTAGE**, on public communications, to  
be paid out of the treasury, ii. 391, iii.  
235, iv. 134, &c.

**PRESTON**, established, i. 238.

**PRESUMPTION**, when the death of ab-  
sentees shall be presumed, ii. 28.

**PRETENSED TITLES**, act against selling  
and buying, (P) ii. 569.

**PRISONERS**, under the laws of the United  
States, may be committed to state prisons,  
ii. 57, 369, iv. 80.

**PRISON.**

Breaking, action for, iii. 59.

Bounds, privilege of, restricted, iv. 101.

**PROCESSIONING LANDS**, act respect-  
ing, i. 554.

**PROCESS.**

In real actions, i. 492, ii. 2.

Time of service of process to be endorsed on,  
by the sheriff, iv. 175.

**PROFITS, MESNE**, action for, not barred  
by proceedings in forcible entry and detain-  
er, iv. 185.

**PUBLIC DEBT**, see Debt, Public.

**PULASKI COUNTY**, formed, ii. 189.

**PUMP**, stealing of, iii. 64.

**QUARTER SESSION COURTS.**

Established, i. 94, 502.

Proceedings in, regulated, i. 94, 157, 203,  
353, 502.

Abolished, iii. 45, 184.

**\* QUIT RENTS.**

Abolished, (V) i. 392.

Arrears of, not due from lands on the western  
waters, i. 392.

**RACES**, not to be run by servants, slaves or  
infants, without the consent of those con-  
cerned, iv. 77.

**RAFFLES**, prohibited, (V) ii. 565.

**RAPE.**

Punishment for, ii. 11, 469.

Attempting to commit, by a slave, punishable  
capitally, iv. 224.

**RAVISHMENT**, punishment on a woman  
ravished, for being reconciled to her ravish-  
er, (E) ii. 544.

**RAZING ROLLS**, how punished, (E)  
ii. 545.

**REBELLION**, conspiracy by slaves to make,  
punishable capitally, iv. 224.

**RECEIVING STOLEN GOODS**, ii. 472.

# REC ]

# INDEX.

# [ REP

## RECOGNIZANCE.

How to be taken from infants and *femes covert*,  
iii. 294.  
In criminal cases, form of, iv. 69.  
To be delivered to the clerk, iv. 69.  
To be taken to the commonwealth in all  
criminal prosecutions, iv. 79.  
Of special bail, form of, (V) i. 482.  
To be taken by the sheriff and endorsed on  
the writ, iv. 176.  
Form of, iv. 176.

## RECORDS.

Of the supreme court, acts respecting, i. 161,  
164, iv. 350.  
In the register's office, certain to be copied,  
iv. 245.  
Destruction of, iii. 155.

RED RIVER, navigation of, to be kept  
open, iii. 249.

REFUSING TO OBEY A SUMMONS,  
punishment of, ii. 480.

## REGISTER OF THE LAND-OFFICE OF VIRGINIA.

Appointed, i. 407.  
Deputy appointed, i. 431.  
Act respecting the deputy's office, (V) i.  
464.

## REGISTER.

His appointment and duties, i. 75, 159, 174,  
216, 235, 368, ii. 111, 274, iii. 210, 313.  
His office placed on the civil list, i. 368.  
A collected view of his general duties, ii. 111.  
To require advice of the attorney-general,  
ii. 274.  
To issue grants for land sold under the reve-  
nue laws, ii. 286.  
To receive relinquishment of land claims, ii.  
435.  
Present register may convey lands sold by a  
former, iii. 313.  
May make conveyances to the assignees of  
purchasers at his sales, iii. 313.  
To sell lands for taxes, ii. 324.

Not to receive plats and certificates in cer-  
tain cases, iv. 1.  
To pay certain monies into the treasury quar-  
terly, iv. 38.  
Not to issue patents on Virginia rights with-  
out a certificate, iv. 71.  
The various duties of this officer, will be  
found under the heads of Land-Office, Re-  
venue, Sales of Land for Taxes, and Re-  
gister, in the indexes to the respective vo-  
lumes.

REGRATING, punishment of, (V) ii.  
561.

## RELINQUISHMENT OF LAND CLAIMS.

May be made with surveyors, i. 222.  
With the register, ii. 435.

REMOVAL FROM OFFICE, proceedings  
preparatory to, ii. 335, iv. 186.

RENTS AND DISTRESS, (E & V) ii.  
500 to 507.

## RENT.

Action for, not to be barred by proceedings  
in forcible entry and detainer, i. 185.  
In what cases rent has precedence of other  
debts, i. 542.  
Distress, proceedings in, regulated, iv. 271.

REPLEVIN, action of, (V) ii. 507, iv. 271.

REPLEVIN BONDS, see Bonds, Replevin.

REPLICATION, in chancery, not necessa-  
ry, iv. 260.

REPORTER, advertisements in, iii. 530.

REPORTS, certain English, not to be read  
in courts, iii. 457.

REPRESENTATION, acts concerning, ii.  
168, 292, iii. 147, iv. 413.

REPUBLICAN REGISTER, advertise-  
ments in, iii. 192.

REPUBLICAN AUXILIARY, advertisements in, iii. 328.

RESTITUTION, writ of, form of, iv. 183.

RETURN DAYS, to be appointed by courts, iv. 278.

#### REVENUE.

Acts of 1792 respecting, i. 63, 89.

Act of 1793 respecting, i. 211.

Act of 1794 respecting, i. 265.

Act of 1795 respecting, i. 321.

Act of 1796-7 respecting, i. 653.

Act of 1798 respecting, ii. 55.

Act of 1799 respecting, ii. 316.

Act of 1800 respecting, ii. 415.

Act of 1801 respecting, ii. 462.

Act of 1805 respecting, iii. 309.

The mode of taking in lists of taxable property was altered by an act of 1809, which with its amendments are referred to in this volume under the head "Lists of Taxable Property:" at the last session a revenue act was passed on a new principle: the detail of as much of the former revenue acts as is believed to be interesting, will be found in the indexes to the second and third volumes.

REVIVOR, bill of, when not necessary, ii. 403.

RITTENHOUSE ACADEMY, incorporated, ii. 240.

RIGHT, WRITS OF, proceedings in, ii. 1.

#### RIOTS.

The present law on the subject, iii. 55.

Common law against, revived, iv. 80.

#### ROADS, PUBLIC.

The law at large respecting, i. 633, ii. 431, iii. 126, 245, 459, iv. 361.

How an order for opening, may be obtained, i. 633.

Width of, ii. 431.

Counties may be laid off into precincts as to, iii. 126.

#### VOL. IV.

Lists of surveyors of, to be furnished, iii. 245.

Duty of ferry keepers respecting, iv. 361.

County courts may exercise discretion as to their width, iv. 361.

Sheriffs to serve orders appointing surveyors of, iii. 459.

#### ROADS, PARTICULAR.

From Frankfort to Cincinnati, i. 185.

From Madison courthouse to the Hazlepatch, i. 231.

To Cumberland Gap, i. 275, 687.

Turnpike road, ii. 162, 266, iii. 52, 129, 210, 282, 510, iv. 109, 242, 264.

To Big Sandy, iii. 4, 166, 350.

From Greensburgh to Tennessee, iii. 21, 336.

From Georgetown to Augusta, iii. 201.

From Newcastle to the mouth of Licking, iii. 365.

From Buckley's ferry to Bairdstown, iii. 463, 535.

From Knox courthouse towards Pulaski courthouse, iii. 463, 535.

To Sandy turnpike, iv. 154, 351.

From Maysville to Washington, iv. 279.

ROBBERY, punishment of, ii. 12, iii. 63.

ROCKCASTLE COUNTY, formed, iv. 91.

ROCKCASTLE ACADEMY, incorporated, iv. 114.

ROLLING FORK, navigation of, iii. 199.

#### ROUGH CREEK.

Navigation of, iv. 116.

Bridge across, iv. 87.

#### ROUTS.

The present law respecting, iii. 55.

Common law against, revived, iv. 80.

#### RULES.

In the clerk's office, laws requiring, repealed, iv. 175.

For pleading, &c. not required, iv. 181.

RUNAWAYS, how to be dealt with, ii. 5.

RUSSELLVILLE, town of, act concerning, iv. 102, 390.

SABBATH BREAKING, ii. 480.

SALARIES OF OFFICERS, i. 171, 639, ii. 43, 411, iii. 304.

SALEM ACADEMY, incorporated, (P) iii. 579.

SALES OF LANDS FOR TAXES.

Lands not to be sold until 1804, iii. 83.

Interest, lien, &c. iii. 83.

Purchasers at, how to proceed, iii. 84.

Infants not to bid, iii. 84.

Lands sold may be redeemed within two years, iii. 335.

SALSERRY, town of, established, iii. 369.

SALT LICKS AND SPRINGS.

Reserved from the Green river settlers, i. 350, 686.

May be appropriated, iii. 49.

Excepted out of the appropriation of lands acquired by the treaty of Tellico, iv. 168.

SALT RIVER, navigation of, iii. 490, iv. 249.

SALT-WORKS, owners of, may convey, water over the lands of others, ii. 438.

SALT AND SALT-PETRE WORKS, ii. 42, 188, 379.

SCIRE FACIAS.

How it may be executed, ii. 442.

When not necessary, iv. 264.

SCOTT COUNTY, boundaries of, i. 629.

SEAL OF STATE, i. 136.

SEAL OF THE LAND-OFFICE, ii. 264.

SEALS OF CIRCUIT COURTS, iii. 234.

SECRETARY OF STATE.

His salary increased, iii. 304.

Allowed to employ an assistant, iii. 304.

To procure a press, &c. for his office, iv. 641.

To exchange copies of the laws, iv. 64.

SECURITIES, summary remedy given them against their principals, ii. 37, iv. 341.

SECURITY OF OFFICERS.

How they may be discharged, ii. 296.

When not liable, iv. 126.

SELLING LANDS BY FL. FA. i. 128, 670, ii. 334, iv. 278.

SELLING A VOTE, ii. 476.

SEMINARIES OF LEARNING.

Endowed, ii. 107.

Trustees of, allowed to dispose of part of their land, ii. 419.

Trustees of, may sell their lands under the direction of circuit courts, iv. 352.

Allowed further time to locate their lands, iv. 327.

SERGEANT OF THE COURT OF APPEALS.

His appointment, duty, &c. iv. 81, 419.

To attend the general court, iv. 419.

His duties and compensation, iv. 81, 419.

SERVANTS.

What servants shall perform their contracts specifically, ii. 7.

Contracts for service, how assignable, ii. 7.

Their duties to their masters, and what they may claim from them, &c. ii. 8, 9.

Not to run races without their master's consent, iv. 77.

SETTLEMENT.

Settlement rights, Virginia, i. 396, &c.

Settlements under the acts of Kentucky—See

## [ SET ]

## INDEX.

## [ SLA ]

the title Settlers, in the indexes to the respective volumes.

### SETTLERS SOUTH OF GREEN RIVER.

Act of 1795 respecting, i. 350.  
 Act of first session of 1798, ii. 91.  
 Act of second session of 1798, ii. 263.  
 Act of 1799, ii. 272.  
 Act of 1800, ii. 381.  
 Act of 1801, ii. 455.  
 Act of 1802, iii. 60.  
 Acts of 1803, iii. 141, 151.  
 Acts of 1804, iii. 175, 196.  
 Act of 1805, iii. 306.  
 Act of 1806, iii. 386, 406.  
 Act of 1807, iii. 478.

### SETTLERS ON SEMINARY LANDS.

To be paid for their improvements, iv. 378.  
 Protected against seminary claims, iv. 378.  
 Various regulations respecting, iv. 247.  
 Provisions in favor of, iv. 334.

SETTLERS, on lands acquired by the treaty of Tellico, provisions respecting, iv. 169.

SETT-OFF, may be plead or given in evidence, i. 204, 506.

SHELBY COUNTY, boundaries of, i. 629.

### SHELBYVILLE.

Established, i. 151.  
 Boundaries of lots in, established, ii. 238.  
 Acts concerning, iii. 143, 415.

### SHELBY ACADEMY.

Incorporated, ii. 241.  
 May sell its lands, iv. 151.

### SHEPHERDSVILLE.

Established, i. 183.  
 Acts concerning, iii. 476, iv. 212.

### SHERIFFS.

Their appointment & duties in detail, i. 580.

English and Virginia acts respecting, i. 578, ii. 523 to 534.

Not obliged to go out of their counties to pay over money, i. 552.

Liable to motion on behalf of the public and public creditors, i. 83, 581, iii. 310.

Liable to motion on behalf of individuals, i. 141, 208, 544, 551, 590, ii. 436, iv. 276, &c.

Their fees and commissions, ii. 256, &c., iii. 144, 169.

To collect county levies from delinquents, iii. 145.

When to account for the revenue, iii. 341.

Implicated in a criminal prosecution, iv. 69.

Subsequent, may convey land sold by former, iv. 85.

Judgments may be entered against, for failing to take bail, iv. 387.

To return on process the time of service, iv. 175.

To endorse on process the time of its reception, iv. 181.

Duty in cases of forcible entry and detainer, iv. 182.

Penalty on, for failing to return executions, iv. 277.

Need not go out of their counties to return process, iv. 277.

Where and when to make sales of land, iv. 278.

Covinous sales by, may be set aside on motion, iv. 278.

May send process by mail, iv. 278.

Limitations to motions against, iv. 277, 279.

SHIPPINGPORT, established (by the name of Campbelltown) (P) iii. 554.

### SHOOTING.

So as to produce death, ii. 467.

Where death does not ensue, proceedings, iv. 78.

SLANDER, action of, will lie for a charge of incest, adultery or fornication, iv. 385.

SLATE CREEK, iron-works may be created on, iv. 366.

## SLAVES.

- Importation of, former laws repealed and a new one made, i. 246.
- Virginia acts respecting, i. 241, ii. 577.
- The law at large respecting, ii. 113, &c.
- As to wills, shall be real estate, ii. 374.
- May be emancipated by persons 18 years old, ii. 387.
- Executed, when not to be paid for by the state, ii. 428.
- Trial of, ii. 215, 417.
- Not to hire themselves, iii. 24.
- Counsel to be employed for, iii. 403.
- Trials of, to be had in county courts, iv. 69.
- Slaves not to run races without their owners' consent, iv. 77.
- Conspiring to rebel, shall suffer death, iv. 223.
- Administering poison, to suffer death, iv. 223.
- Guilty of voluntary manslaughter to suffer death, iv. 224.
- Attempting a rape on a white woman to suffer death, iv. 224.
- Amenable to trustees of towns, iv. 224.
- Punishable with stripes for consulting the murder of any person, iv. 224.

SMALL-POX, various regulations respecting it, iii. 46.

## SODOMY, ii. 12.

## SPRINGFIELD.

- Town of, established, i. 176.
- Trustees of, &c. ii. 387.

## STABBING.

- So as to produce death, ii. 467.
- Where death does not ensue, what proceedings, iv. 78.

STANFORD, town of, established, (V) iii. 558.

STANFORD ACADEMY, incorporated, ii. 240.

STATE BOUNDARY, i. 626, ii. 276, 434, iii. 80, iv. 388.

## STATE BANK.

- Established, iii. 390.
- Dividend of the state in, how to be received, iii. 452.
- To pay auditor's warrants, iii. 528.

STATE-HOUSE, keeper of, to be appointed and his duty, ii. 225.

## STEALING.

- A land warrant, iii. 64.
- A pump, iii. 64.
- And selling free persons, ii. 468.
- Horses, increased punishment for, iv. 78.

STERLING DEBTS, recovery of, (V) ii. 519.

STRAYS, i. 250, 284.

A collected view of the law respecting, ii. 77.

STRIKING, so as to produce death, ii. 467.

## SUBPCENA IN CHANCERY.

- When returnable, iv. 175.
- On amended bill, not necessary, iv. 180.

SUBORNATION OF PERJURY, ii. 475.

SUFFRAGE, certain persons excluded from, i. 182.

SUITS AT LAW AND IN CHANCERY, act respecting, iv. 175.

SUITS AT LAW, when to be tried, iv. 177.

## SUPERSEDEAS.

- How obtainable, ii. 310.
- Ten per cent. given on affirmation of superseded judgments, ii. 310.
- Not allowable in cases under fifty dollars, iv. 181.
- Bond may be executed in the inferior courts, iv. 367.
- Bonds, how far securities are liable in, iv. 388.



## SURVEYS.

Virginia, certain confirmed, i. 392.  
 Certain declared void, i. 393.  
 How to be made under the Virginia law, i.  
 411, 412.  
 Mistake in, how to be corrected, i. 418.  
 The Virginia law respecting, declared to be  
 the law of this state, ii. 460.  
 Certain, to be void, iv. 229, 231.

## SURVEYORS.

Virginia, their qualifications, appointment &  
 duties, i. 409, 445.  
 To be appointed in Kentucky, in each coun-  
 ty, their duties, i. 61, iii. 405.  
 Of reserved lands, to be continued by com-  
 mission, i. 89.  
 Not to admit entries, &c. made since the 1st  
 May 1792.  
 To certify on the certificate of survey the date  
 of the entry, i. 165.  
 To settle their accounts with the Transylva-  
 nia University, iii. 61.  
 Fees reduced, iii. 234.  
 What to certify on certain surveys, iv. 72.

SURVIVORS OF ACTIONS, i. 489,  
 ii. 441, iv. 384.

## SWEARING, ii. 479.

SWINE, the restrictions on owners of mills  
 respecting, repealed in part, iii. 112.

TAVERNS, how licences may be obtained  
 for, and the duties and responsibilities of  
 tavern keepers, i. 194.

## TAXABLE PROPERTY.

A new mode of taking lists of, iv. 159 to 163.  
 Amendatory acts respecting, iv. 207, 267,  
 420.

## TAXES.

See Revenue, and Sale of Land for Taxes, in  
 the indexes to the respective volumes.  
 Time for entering land for taxes prolonged,  
 iv. 5, 213.

Lands sold for, by a former sheriff, may be  
 conveyed by a subsequent, iv. 83.  
 Lands sold for, further time allowed to re-  
 deem, iv. 174, 218.

TELEGRAPH, advertisements may be  
 printed in, iv. 316.

## TELLICO LANDS.

Treaty of, appropriation of lands acquired by,  
 iv. 167.  
 Protected against certain claims, iv. 229,  
 281.  
 Amendatory acts respecting, iv. 258, 404.  
 Money for sale of, made bank stock, iv. 349.

TENANTS IN COMMON, how they  
 may obtain partition, i. 510, iv. 240.

TENANT AT WILL, when he may be  
 proceeded against for forcible detainer, iv.  
 185.

TENNESSEE, see boundary of the state.

THREATS TO EXTORT MONEY,  
 punishment of, iii. 68.

## TITHEABLES:

An act concerning, i. 678.  
 White males over 16 and under 21, no longer  
 titheable, iv. 38.

## TITLES.

Pretended, not to be sold, (P) ii. 569.  
 Feigned, (E) ii. 497.

TITLE PAPERS, in Virginia, directed to  
 be brought to this state, i. 652, ii. 181.

TITLES TO LAND, relinquishment of,  
 i. 222, ii. 435.

## TOBACCO.

Comprehensive act respecting, ii. 137, &c.  
 Fees and fines charged in, to be paid in mo-  
 ney, i. 88, 155.  
 The act requiring it to be sold, suspended,  
 iv. 52.

## TOB

May be exported by those who raise it without inspection, iv. 167.

## TOWNS.

County courts authorized to establish, i. 512.  
Additions, how to be made to, i. 514.  
General regulations respecting, ii. 61.  
Regulations concerning springs in, ii. 62.  
Number of trustees of, to be fixed by the county courts, ii. 406.  
Clerks of, to continue in office until resignation or removal, ii. 406.  
Platts of, to be recorded, ii. 406.  
Forfeiture of lots in, for want of building, abolished, ii. 458.

## TRANSYLVANIA SEMINARY.

Escheated lands vested in trustees for a public school, (V) iii. 571.  
Trustees of, incorporated, and various regulations respecting, (V) iii. 571.  
A sixth of the surveyors' fees in Kentucky appropriated to it, (V) iii. 576.  
Act concerning its trustees, (V) iii. 576.  
Surveyors to give bond to its trustees, &c. (V) iii. 577.  
United to the Kentucky Academy, and called the Transylvania University, ii. 234.  
Remedy given it against delinquent surveyors, iii. 61.

TRAVERSE IN FORCIBLE ENTRY AND DETAINER, proceedings in, iv. 184-5.

## TREASURER.

His appointment and duty, i. 80, ii. 133.  
His salary, iv. 172.

TREASURER'S OFFICE, act concerning, iv. 66.

TREASURY, no money to be drawn from, unless expressly directed by law, ii. 380.

TREASURY WARRANTS, Virginia act to prevent fraudulent appropriations of land under, iv. 77.

## INDEX.

## [ VAC

TREASON, punishment of, ii. 11.

TREES, CORNER, felony to remove or deface them, iv. 78.

TRESPASSING BEASTS, ii. 27.

TRIAL OF SLAVES, to be had in county courts at their regular terms, iv. 69.

TRUSTEES OF TOWNS, to have the same authority to punish slaves that justices of the peace have, iv. 224.

TURNPIKE, see Roads, particular.

## UNITED STATES.

Constitution of, amendments to, i. 76, 223, iii. 149.

Officers prohibited from holding offices under the state government, ii. 237.

Prisoners to be received and kept in the state jails, ii. 57, 369.

Jurisdiction given them of a piece of land in Campbell county, iii. 142.

To reimburse certain military expenses, iii. 203.

Offenders against, to be confined in the penitentiary, iv. 80.

UNION COUNTY, formed, iv. 212.

## UNSEALED WRITINGS.

Not to be impeached without oath, ii. 440.

Put on the same footing with specialties, iv. 385.

USURY, usurious contracts void, ii. 45.

UNSOUND MIND, provisions respecting persons of, (V) ii. 577, 578, i. 191, iii. 169.

## VACANT LANDS.

First act respecting, ii. 420.

Act of 1801 respecting, ii. 420.

Act of 1803 respecting, iii. 132.

Act of 1806 respecting, iii. 360.

## VAG

## INDEX.

## [ WAR

**VAGRANTS**, who are vagrants, and how they are to be dealt with, i. 288.

**VENDUES**, prohibited, (V) ii. 563.

**VENIREMAN**, allowance to, lv. 250.

**VENUE**, every information by a common informer shall lay the offence in the county where it was in fact committed, (E) ii. 532.

### VENUE, CHANGE OF.

Act of 1798 respecting, ii. 58 [*Superfeded.*]

A cause on change of venue not to be sent to a county in which either of the parties resides, ii. 437, iii. 153.

Change of, notice to be given and certified, iii. 71.

The law in detail respecting change of venue under the circuit court system, iii. 152.

Parties may have a change of venue by consent, iii. 189.

Change of, what notice required in, iv. 349.

Order for, need not be deposited 30 days before trial, iv. 350.

Assistant judges wayward, iv. 149.

**VERDICTS**, special, juries authorized to find, (E) ii. 513.

### VERSAILLES.

Town of, established, i. 62.

Act establishing it amended, i. 126.

Spring in, act regulating, iv. 45.

Act concerning, iv. 331.

**VINEYARD SOCIETY**, incorporated, ii. 258, iii. 139.

**VIRGINIA**, boundaries of, i. 390, 463.

**VIRGINIA TREASURY WARRANTS** act to prevent a fraudulent use of, iv. 71.

**VIRGINIA SOLDIERS**, their lands protected, iv. 229.

**VOTE**, selling of, ii. 476.

## WAREHOUSES.

See inspections.

Losses in, by fire, not to be paid for by the public, iv. 30.

To be repaired at the expense of the proprietors, iv. 167.

## WARRANTY.

What words in a deed will bind the feoffee to warranty, (E) ii. 508.

A warrantor may be admitted defendant in a suit against his warrantee, (E) ii. 508.

## WARRANTS, VIRGINIA LAND.

For military services, how obtained, i. 393.

Pre-emption, how obtained, i. 405.

Warrants may be exchanged, how located, &c. i. 408.

Made assignable, i. 415.

Stealing or forging a land warrant, felony, i. 419, iii. 64.

Pre-emption, further time to enter, i. 433, 438, 446, 452, &c.

May be entered on any vacant land as treasury warrants, i. 439.

Land warrants not to be destroyed, i. 462.

Treasury warrants, when they may be obtained, i. 408.

Act to prevent fraudulent use of, iv. 71.

**WARRANTS IN CRIMINAL PROSECUTIONS**, defect in, not to produce a prisoner's discharge, iii. 241.

**WARRANT, DISTRESS**, not to be issued by the landlord, i. 271.

**WARRANTS IN FORCIBLE ENTRY AND DETAINER**, form of, iv. 182.

## WARRANTS, AUDITOR'S.

To be received in payment for land, ii. 428.

Forgery of, felony, ii. 410.

## WARWICK.

Town of, established, (V) iii. 563.

Owners of lots allowed further time to improve, i. 124.

# WAS1

# INDEX.

# [WIT

## WASHINGTON COUNTY.

Boundaries of, i. 629.  
Election precinct established in, iv. 329.

## WASHINGTON.

Town of, established, (V) iii. 555.  
Acts concerning, i. 199, 221, 260, 650.  
Its trustees, &c. ii. 52.  
The several acts concerning it reduced into one, ii. 393.

WASHINGTON ACADEMY, incorporated, ii. 242.

## WASTE.

Tenants committing waste liable to action and amercement, (E) ii. 513.  
A comprehensive act respecting, ii. 50.  
May be restrained by circuit courts pending a traverse in forcible entry, &c. iv. 185.  
Action for, not barred by proceedings in forcible entry and detainer, iv. 185.

## WATER COMPANY, FRANKFORT.

Incorporated, iii. 287.  
Trustees of the town made directors of, iv. 52.

## WATER COURSES, see navigation.

WATER-WORKS OF ALL KINDS, privilege of erecting, under the laws respecting mills, iv. 143.

WATER-WORKS, allowed to be built on the Kentucky river, near Frankfort, iii. 129.

WAX, persons offering impure wax for sale, to forfeit 2s. per pound, (B) ii. 550.

## WAYNE COUNTY.

Formed, ii. 392.  
Proceedings of its court legalized, ii. 492.

WEEKLY MESSENGER, advertisements in, iii. 161.

## WEIGHTS AND MEASURES.

English acts respecting, ii. 573-4.  
A Virginia act respecting, ii. 575.  
Regulations by Kentucky acts respecting, ii. 194, 301.

WESTERN AMERICAN, advertisements in, iii. 161.

WESTERN WORLD, advertisements in, iii. 328.

WESTERN CITIZEN, advertisements in, iii. 530.

WESTERN COURIER, advertisements may be printed in, iv. 316.

WILLS, the law at large respecting, i. 611.

WILLIAMSVILLE, established, ii. 118.

WILMINGTON, established, i. 175.

## WINCHESTER.

Town of, established, i. 187.  
Platt of, established and to be recorded, ii. 458.  
Act regulating, iv. 45.  
Lot in, iv. 379.

WINCHESTER ACADEMY, established, ii. 217.

## WITNESSES.

Owner of stolen goods competent witness in a criminal prosecution, (D) i. 464, iii. 295.  
Provisions of the district court law respecting, i. 309, &c. [Superseded.]  
A comprehensive act respecting, ii. 96.  
In criminal prosecutions to be recognised by magistrates, iv. 68.  
Summons for, when to issue, iv. 177.  
Allowance to, iv. 250.  
Officers of government attending as such, allowance to, iv. 250.  
Clerks' certificates of allowance to have the force of leg. bills, iv. 250.

## WIVES.

Abandoned by their husbands, provisions for, iv. 408.

Renouncing the marriage contract, husbands may obtain divorce from, iv. 408.

## WOLVES.

Repealed act of 1795 respecting, i. 336.

Repealing act, iv. 30.

Compensation for killing, given under certain restrictions, iv. 142.

WOODFORD COUNTY, boundaries of, i. 628.

## WOODFORD ACADEMY,

Incorporated, ii. 243.

Act for the benefit of, iv. 123.

Trustees of, may sell part of their ground, iv. 232.

WOUNDING, without killing, iii. 67, 240, iv. 78.

WRITS, to be returnable to the first days of courts, iv. 175.

WRITS OF ACCOUNT, capias may issue in, (E) ii. 513.

WRITS IN CASU CONSIMILI, (E) ii. 510.

## VOL. IV.

WRIT OF NUISANCE, (E) ii. 510.

## WRITS OF ERROR.

When they may be prosecuted by reversioners not parties to the judgment, (E) ii. 511.

Matter of right, i. 563.

Where they will lie on error in fact, i. 563, ii. 219.

Limitation of, i. 564, iv. 284.

Not to lie on judgments in caveats, i. 500, iv. 81.

To lie on judgments in caveats, iv. 284.

Not to lie from a judgment on appeal from a magistrate, ii. 443.

Not to lie on prosecutions under the riot act, iii. 241.

Proceedings, i. 563, &c. ii. 310.

WRITS OF ERROR CORAM VOBIS, proceedings in, iii. 92, 120.

WRITS OF ELECTION, when to be issued by the governor, iii. 91, 472.

WRIT OF RIGHT, a comprehensive act respecting, ii. 1, &c.

## WRITINGS.

Unsealed, not to be denied except on oath, ii. 440.

Put on the same footing with writings sealed, iv. 385.



# INDEX

## TO THE APPENDICES TO THIS VOLUME.

---

### ABSENT DEFENDANTS.

Act of 1744 respecting, iv. 523.  
 Act of 1777 respecting, iv. 526.  
 Act of 1787 respecting, iv. 529.

### ACKNOWLEDGMENT OF DEEDS.

(Act of 1748.)  
 By residents, iv. 424.  
 (Act of 1776.)  
 By non-residents, iv. 432.

ATTACHMENTS, forms of, iv. 496,  
 497, 498.

BOONE COUNTY, formed, iv. 535.

COUNTY COURTS, a brief sketch of  
 their duties, iv. 508.

### DEEDS.

(Act of 1748.)  
 How to be executed, iv. 423 to 427.  
 Acknowledgment of, iv. 424.  
 Proof of, iv. 424.  
 Where to be recorded, iv. 424.  
 Of various kinds, iv. 424-5.  
 Of *femes covert*, iv. 425.  
 When valid between parties, though void  
 as to creditors and purchasers, iv. 425.  
 Memorials of, to be transmitted to the se-  
 cretary's office, iv. 426.  
 (Act of 1776.)  
 Deeds by non-residents, acknowledgment of,  
 iv. 432.  
 Proof of, iv. 432.

Of *femes covert*, iv. 433.  
 Certificate of proof of, iv. 433.  
 Recording of, iv. 433.  
 Of sheriffs and commissioners, iv. 434-5.  
 (Act of 1785.)  
 Deeds, how to be executed, iv. 438.  
 Of residents, iv. 438-9.  
 Of non-residents, iv. 439, 440.  
 Of *femes covert*, iv. 440.  
 Duty of clerk in recording, iv. 441.  
 Construction of, iv. 441-2.

### DEVICES.

Acts of Hen. VIII. authorizing devices, iv.  
 457-8.  
 Act of 1748 on do. iv. 459.  
 Act of 1785 respecting, iv. 474.

DOWER, relinquishment of, iv. 425-6.

### FEMES COVERT:

Deeds of, iv. 424.  
 Privy examination of, to be recorded, iv. 426.

### JUSTICES OF THE PEACE.

Their appointment and removal from office,  
 iv. 491.  
 Their duties in civil suits, iv. 492.  
 In attachments, iv. 493.  
 Forms for, in civil proceedings, iv. 495 to  
 499.  
 Their duties in preventing the perpetration  
 of crimes, iv. 499.  
 Forms for, in, iv. 500 to 505.

# INDEX TO THE APPENDICES TO THIS VOLUME.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Their duties in bringing offenders to justice, iv. 505.</p> <p>Forms for, in, iv. 507.</p>                                                                                                                                                                                                                                                                                                                                                                                                    | <p>On the act of 1785 respecting devises, iv. 477.</p> <p>On the act of 1787-8 respecting wills, iv. 480.</p> <p>On the act of 1789 respecting wills, iv. 484, &amp;c.</p>                            |
| <p>LEASES FOR YEARS, iv. 424.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                       |
| <p>OBSERVATIONS.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>PROOF OF DEEDS, iv. 424.</p> <p>Proof of execution, by non-residents, iv. 432.</p>                                                                                                                 |
| <p>On the act of 1748 respecting conveyances, iv. 427, 431.</p> <p>On the act of 1776, iv. 435 to 438.</p> <p>On the act of 1785, iv. 443 to 448.</p> <p>On the acts of 1782 establishing a supreme court in Kentucky, iv. 448.</p> <p>On acts respecting, iv. 471, 480.</p> <p>On the act of 1792 respecting relinquishment of dower, iv. 444-5.</p> <p>On the act of 1796 regulating conveyances, iv. 453, &amp;c.</p> <p>On the statute 29 Char. II. and the act of 1748, iv. 471 to 474.</p> | <p>SHERIFFS, a brief outline of their duties, iv. 511.</p> <p>WARRANTS, forms of, iv. 495, 496, 500, 503.</p>                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>WILLS.</p> <p>Acts of Hen. VIII. respecting, iv. 457-8.</p> <p>Acts of 1748 respecting, iv. 459 to 471.</p> <p>Act of 1787 respecting, iv. 477 to 480.</p> <p>Act of 1789 respecting, iv. 484.</p> |



# TABLE OF PERSONAL ACTS

CONTAINED IN THIS VOLUME.

|                                |      |     |                                       |   |     |
|--------------------------------|------|-----|---------------------------------------|---|-----|
| Adams, Thomas,                 | -    | 13  | Love, Joseph, and others,             | - | 257 |
| Armstrong, James, heirs of,    | -    | 87  | Moren, John,                          | - | 13  |
| Anderson, George,              | -    | 325 | M'Bee, Silas,                         | - | 13  |
| Bristow, James, heirs of,      | -    | 6   | Muter, George,                        | - | 16  |
| Bradshaw, Edmund,              | -    | 127 | Morton, Richard,                      | - | 157 |
| Brooks, Joseph,                | -    | 133 | M'Gill, John,                         | - | 159 |
| Barnett, Joseph, &c.           | -    | 137 | Mangham, Joseph K.                    | - | 248 |
| Bradshaw, John,                | -    | 206 | M'Coun, James,                        | - | 319 |
| Biggs, Andrew,                 | -    | 250 | Meek, David,                          | - | 328 |
| Blakely, Charles,              | -    | 323 | M'Bride, William and Lapfley,         | - | 330 |
| Burke, Mary, and others,       | -    | 332 | M'Castlin, Andrew,                    | - | 374 |
| Brown, John,                   | -    | 350 | Northcut, Archibald,                  | - | 30  |
| Brown, William,                | -    | 358 | Nelson county surveyor,               | - | 412 |
| Breckentridge, John, heirs of, | -    | 395 | Oulton, Thomas,                       | - | 358 |
| Burke, Andrew, and others,     | -    | 415 | Pope, John,                           | - | 58  |
| Carothers, John, and others,   | -    | 134 | Parke, Andrew,                        | - | 317 |
| Cummins, Peter,                | -    | 148 | Porter, Robert,                       | - | 323 |
| Cravens, Jesse,                | 228, | 358 | Prague, John,                         | - | 325 |
| Chapline, William, dec'd.      | -    | 330 | Pearl, William,                       | - | 325 |
| Caldwell, Philips and Samuel,  | -    | 381 | Quirey, Charles,                      | - | 60  |
| Chaffin, Joseph, and others,   | -    | 381 | Reed, Joseph,                         | - | 194 |
| Chaffin, Joseph, heirs of,     | -    | 410 | Randolph, Thomas,                     | - | 323 |
| Dicken, Ephraim,               | -    | 38  | Rayfield, Isaac,                      | - | 336 |
| Elliott, John, dec'd.          | -    | 9   | Robertson, John, heirs of,            | - | 412 |
| Edgman, Thomas K.              | -    | 98  | Sheriff's,                            | - | 6   |
| Ewing, Young,                  | -    | 110 | Sheriff of Hopkins county,            | - | 9   |
| Ewing, George, heirs of,       | -    | 170 | Short, Samuel,                        | - | 105 |
| Eastin's and Ingram's heirs,   | -    | 412 | Sergeant, Johnston,                   | - | 157 |
| Fowler, John,                  | 170, | 253 | Scott, Thomas,                        | - | 192 |
| Francis, John,                 | -    | 257 | Singleton, Matthew,                   | - | 195 |
| Grizel, Andrew,                | -    | 159 | Sheriff of Cumberland county,         | - | 200 |
| Gatewood, John,                | -    | 210 | Salsbury, Thomas,                     | - | 242 |
| Graham, Edmund,                | -    | 317 | Slavey, Richard,                      | - | 257 |
| George, Dolly,                 | -    | 220 | Steavis, Rueben,                      | - | 259 |
| Hinch, Samuel,                 | -    | 60  | Stiggall, William,                    | - | 317 |
| Hart, Joseph,                  | -    | 70  | Simral, William F. heirs of,          | - | 325 |
| Harper, Hans,                  | -    | 201 | Saunders, Lewis,                      | - | 325 |
| Herndon, Richardson,           | -    | 220 | Smith, William,                       | - | 325 |
| Hay, Fanny,                    | -    | 233 | Sheriff, Deputy, of Christian county, | - | 394 |
| Hall, Caleb,                   | -    | 330 | Thomas, John P.                       | - | 134 |
| Holder's heirs and others,     | -    | 336 | Triplett, Francis,                    | - | 163 |
| Harrow, John, heirs of,        | -    | 405 | Talbot, Edmund,                       | - | 212 |
| James, John,                   | -    | 13  | Townshend, Thomas,                    | - | 336 |
| Jackson, John,                 | -    | 13  | Trabue, Daniel,                       | - | 394 |
| Irvan, William,                | -    | 330 | Upton, John, heirs of,                | - | 12  |
| Kelfo, Daniel,                 | -    | 6   | Wilmot, Richard,                      | - | 51  |
| Kincaid, James,                | -    | 38  | Worthington, Elizabeth, &c.           | - | 51  |
| Kelfo, Charles,                | -    | 174 | Wakefield, Allen M. (administratrix)  | - | 163 |
| Knighten, Jesse,               | -    | 394 | Wilkinson, John,                      | - | 276 |
| Logan, John, heirs of,         | -    | 58  | Weagle, John,                         | - | 282 |
| Lacey, William,                | -    | 87  | Walker, John W. dec'd.                | - | 282 |
| Lee, John N.                   | -    | 148 | Watson, Shem,                         | - | 319 |
| Lodge, Matthew,                | -    | 171 | Wilhelms, Blue and Morris,            | - | 340 |
| Loney, Amos,                   | -    | 192 |                                       |   |     |



## CORRECTIONS FROM THE ROLLS.

### VOLUME I.

- Page.
- 55 line 10th, insert *or* before the words *by leave, &c.*
- 119 line 11th, insert *house* before the words *shall be built.*
- 125 last line but one, read *Downey* instead of *Dowery.*
- 160 last word in the 4th sect. read *decedant* instead of *defendant.*
- 190 first line, for *clerk* read *clerks.*
- 192 sect. 4, insert *indenture* after *each.*
- 195 line 9, read *privy* instead of *privy.*
- 261 sect. 4, read *enter into* bond instead of *enter bond.*
- 267 line 3, read *himself* instead of *him.*
- 295 sect. 1, instead of north of Main Licking read north *fork* of Main Licking.
- 301 sect. 3, line 4, read *there* instead of *their.*
- 310 line 13, erase the word *or* between the words *defence* and *as.*
- 326 number the last section 7 instead of 2.
- 356 first line of the act respecting Winchester, read *lots* instead of *lands.*
- 368 about the middle of the 1st sect. insert the word *at* between *shall* and *any.*
- 383 line 6th, for *lodged* read *alleged.*
- 463 sect. 94, line 8, instead of *this* period, read *the* period.
- 541 line 1, insert *any* between *in* and *court.*
- 573 sect. 15, line 1, instead of *grants or rents,* read *grants of rents.*
- 583 line 13, instead of *no* read *now.*
- 593 line 2, instead of *county* read *country.*
- 596 line 11, instead of *for* read *or.*
- 601 line 14, insert the words *that such* between the words *made* and *copy.*

### VOLUME II.

- 37 and 38. respecting securities. In the roll the words *surety, sureties* and *suretyships,* are used throughout, instead of *security, &c.* as in the printed copies; except where collateral security is mentioned in the last section—there it is *security* in the roll.

Page.

- 37 sect. 2, line 4, erase the word *or* between *persons* and *security.*
- 40 last line of the preamble, read *thereby* instead of *hereby.*
- 70 last line but one, erase the word *or* between the words *felonies* and *ro.*
- 71 sect. 11, line 2, insert *as* between the words *or* and *accessory.*
- 167 line 8th, instead of *any* read *and*
- 226 sect. 3, instead of *or* mandamuses, read *on* mandamuses.
- 240 line 5, instead of *present* read *purest.*
- 320 line 4, instead of *coming in* office, read *coming into* office.
- 380 line 3, instead of *Stuckley* read *Stuckey.*
- 480 line 10, for *and* default, read *and in-* default.

### VOLUME III.

- 19 sect. 3, line 2, for *locator* read *locators.*
- Same sect. line 6, erase the word *and.*
- 43 line 5, for *of* read *and.*
- 57 line 10, instead of 22 read 32.
- Same page, 3d line from the foot, instead of *full* read *fill.*
- 59 line 9 from the bottom, instead of *is* read *into.*
- 64 sect. 6, line 5, for *or aiding, &c.* read “*or of aiding.*”
- 67 sect. 13, line 6, for *intention* read *intent.*
- 72 line 6 from the foot, for *portion* read *proportion.*
- 73 sect. 4, line 5, insert *other* between the words *all* and *persons.*
- 76 in the proviso to sect. 9, instead of *with* the Governor, read *to* the Governor.
- 87 sect. 11, last line but one, instead of *counties* read *courts.*
- Same page; sect. 14, line 5, instead of *counties* read *circuit.*
- 88 sect 18, line 2, insert *shall* between the words *courts* and *have.*
- 89 sect. 24, line 5, instead of *a* circuit court, read *the* circuit court.
- 93 sect. 6, line 1, read *cases* instead of *causes.*

## Page.

- 103 line 6, instead of *including* read *excluding*.  
 106 sect. 6, wherever the word *hereafter* occurs in this section, read *heretofore*.  
 109 line 4 from the foot, instead of "and if the person charged," &c. read "and as if the person charged," &c.  
 115 near the end of sect. 6, read *heretofore* instead of *hereafter*—and in the 7th sect. read *hereafter* instead of *heretofore*.  
 131 sect. 34, line 3, for *each* read *such*.  
 135 sect. 2, for *unvald* read *invalid*.  
 143 the enrolled bill gives the county of Shelby two additional justices immediately after Ohio.  
 152 where *venue* is mentioned in the printed act, it is *venue* in the roll.  
 153 line 3, the words *or their*, come in between the words *her* and *petition*.  
 186 latter part of sect. 2, the word *aforsaid* comes in between the words *persons* and *as*.  
 187 the enrolled bill gives the county of Knox one, and the county of Christian two justices—it comes in after *Garrard*.  
 250 line 5 from the foot, instead of *conveyed* read *unconveyed*.  
 322 sect. 2, line 6, insert the word *upper* between the words *each* and *bulge*.  
 325 The act respecting Cynthiana is in force from its passage in the roll.  
 334 The preamble to the 3d section is not in the roll.  
 339 last line, for *fork* read *forks*.  
 347 last word in sect. 4, for *therein* read *thereon*.  
 362 line 3 from the foot, read *court* instead of *county*.  
 368 sect. 2, near the end, read *seller* or *sellers* instead of *settler* or *settlers*.  
 369 near the top, read *entitled* instead of *allowed*.  
 Same, near the foot, read *Cherry* instead of *Gberry*.  
 378 line 9, instead of *or* read *and*.  
 Same, sect. 4, line 2, instead of "who hold," read "who *shall* hold."  
 379 line 18, instead of "any subpoena," read "any *such* subpoena."  
 380 sect. 8, for *hereafter* read *heretofore*.  
 384 sect. 1, line 6 from the end, insert the words "in good repair" immediately after the word *same*.  
 404 chapter 300 has no commencing clause in the roll.

## Page.

- 413 line 4, chap. 316, read *Thatcher's* instead of *Tbocker's*.  
 Line 6th, read *rifle* instead of *riffs*.  
 417 line 3 from the foot, instead of *plaintiff* read *plaintiffs*.

## VOLUME IV.

- 2 sect. 1, line 2, insert the word *said* before the word *town*.  
 Same sect. 5th line from the end, read *of them*, instead of *thereof*.  
 14 line 1, read of the county, instead of in the county.  
 16 the allowance to Knox county of three additional justices is not in the roll.  
 21 line 13 from the foot, insert the words "if any" after *indisposition*.  
 34 commencing clause, instead of *May* read *March*.  
 37 line 4, erase the word *most*.  
 39 chap. 49, was not approved, but passed, the governor's objections notwithstanding.  
 55 sect. 5, near the end, insert the word *one* immediately after the word *three*.  
 65 line 7, read *judicial* instead of *juridical*.  
 72 sect. 2, line 1, instead of *a plat*, read *no plat*.  
 Same sect. line 12, instead of *the survey*, read *such survey*.  
 82 line 8 from the foot, instead of *marshal* read *sergeant*.  
 88 line 4 of 2d paragraph, instead of *and* read *who*.  
 89 chap. 99, for January, 1810, read January "4th," 1810.  
 92 line 6th, insert *to* after the word *line*.  
 99 sect. 4, line 13, insert the word "of" between *any* and *the*.  
 105 sect. 11, near the end, for *patrols* read *patrollers*.  
 Sect. 12, line 2, insert *county* after *Logan*.  
 113 beginning of chap. 120, instead of *Langby* read *Langley*.  
 114 sect. 4, instead of *time* read *times*.  
 118 sect. 4, line 6, instead of *becoming* read *remaining*.  
 121 sect. 8, instead of *duty* read *office*.  
 122 sect. 14, line 3, insert the word *every* between the words *for* and *such*.  
 Same sect. line 7, instead of *trustees* read *trustee*.  
 123 Chap. 126, line 10, insert the words "right and" before *jurisdiction*.

# CORRECTIONS FROM THE ROLLS.

ix

| Page. |                                                                                                                                                                                                | Page. |                                                                                                                                                                      |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 128   | sect. 1, for <i>Fugued</i> read <i>Fuguer</i> .                                                                                                                                                | 260   | line 6, read <i>examined</i> instead of <i>re-exa-</i><br><i>mined</i> .                                                                                             |
| 148   | chap. 150 and 152 were approved on the<br>26th instead of 27th January.                                                                                                                        | 279   | line 3, insert " <i>other</i> " between the words<br><i>or</i> and <i>suit</i> .                                                                                     |
| 150   | there is in the rolls a commencing clause<br>to the act ending on this page, mak-<br>ing it in force from its passage.                                                                         | 318   | sect. 1, line 6, instead of <i>Hanna</i> read<br><i>Hann</i> .                                                                                                       |
| 165   | last line but one from the foot, instead of<br><i>or</i> read <i>on</i> .                                                                                                                      | 328   | line 8, for <i>Blinie</i> read <i>Blinco</i>                                                                                                                         |
|       | Last line, instead of <i>on</i> read <i>or</i> .                                                                                                                                               | 335   | sect. 5, near the end, for <i>and</i> settlement<br>read <i>or</i> settlement.                                                                                       |
| 173   | line 9, for <i>denlinguents</i> read <i>delinquencies</i> .                                                                                                                                    | 336   | sect. 10, line 5, for <i>reduction</i> read <i>deduc-</i><br><i>tion</i> .                                                                                           |
| 182   | sect. 1, line 3, for <i>case</i> read <i>cases</i> .                                                                                                                                           | 345   | transpose sections 15 and 16.                                                                                                                                        |
| 183   | sect. 6, line 3, erase the words " <i>or not</i><br><i>guilty</i> ."                                                                                                                           | 364   | near the foot, the following words are not<br>in the roll, viz. "set up at any cor-<br>ner or corners of said lots, stones or<br>poits where they may be necessary." |
| 184   | sect. 9, line 1, for <i>justices</i> read <i>justice</i> .                                                                                                                                     | 372   | line 4 from the foot, instead of <i>with</i> read<br><i>without</i> .                                                                                                |
| 185   | sect. 11, last line, instead of <i>cases</i> read<br><i>causes</i> .                                                                                                                           | 382   | sect. 2, line 3 from the end, the word<br>" <i>oath</i> " after <i>aforsaid</i> is wanting in<br>the roll.                                                           |
| 192   | line 14, for <i>transcript</i> read <i>transcripts</i> .                                                                                                                                       | 387   | sect. 19, line 3 from the foot, the word<br><i>not</i> is wanting in the roll.                                                                                       |
| 193   | sect. 1, for <i>Barty</i> read <i>Bailey</i> .                                                                                                                                                 | 397   | line 3 from the foot, the words " <i>fail to</i> "<br>are wanting in the roll.                                                                                       |
| 203   | sect. 6, instead of <i>Dodd</i> read <i>Dodds</i> .                                                                                                                                            | 404   | sect. 1 of the Tellico act, instead of 31ft<br>read 21ft                                                                                                             |
| 212   | act respecting officers' bonds, was ap-<br>proved 10th instead of 15th January.<br>Same page, 3d line of the act respecting<br>Shepherdsville, read <i>platt</i> instead of<br><i>platts</i> . | 409   | sect. 8, line 7, instead of <i>remain</i> subject,<br>read <i>to be made</i> subject.                                                                                |
| 216   | sect. 5, line 6, instead of <i>in</i> read <i>by</i> .                                                                                                                                         | 417   | sect. 4, the following words are not in<br>the roll, viz. "Saturday next suc-<br>ceeding the commencement of each<br>general election, and at the same<br>place."    |
| 224   | sect. 5, line 2, instead of <i>a</i> town read<br><i>any</i> town.                                                                                                                             |       | Same page, act respecting Nicholasville,<br>end of the 1st sect. in the roll is <i>con-</i><br><i>cieve</i> instead of <i>concur</i> .                               |
| 225   | sect. 2, line 4, instead of <i>Kelkots</i> read<br><i>Kilkots</i> .                                                                                                                            |       |                                                                                                                                                                      |
| 229   | line 20, instead of " <i>south of Tennessee</i><br><i>river</i> ," read " <i>below Tennessee river</i> ."                                                                                      |       |                                                                                                                                                                      |
| 240   | sect. 9, line 3, instead of <i>residents</i> read<br><i>resident</i> .                                                                                                                         |       |                                                                                                                                                                      |
| 242   | turnpike act, last line but one of sect. 1,<br>insert the word " <i>as</i> " before <i>aforsaid</i> .                                                                                          |       |                                                                                                                                                                      |
| 259   | line 4, insert " <i>all</i> " between the words<br><i>of</i> and <i>the</i> .                                                                                                                  |       |                                                                                                                                                                      |

NOTE.—The Federal Constitution, prefixed to Vol. I. was printed from an incorrect copy; the reader will please to correct the following errors: Page 2, line 6, insert the word *ten*, between "*of*" and "*years*." Page 4, sect. 7, line 2, instead of "*shall*" read *may*. Page 11, sect. 1, art. iv. line 3, (of the section) the word "*penal*" is inserted instead of the word "*general*." Same page, sect. 3, art. iv. line 4, after the word "*states*," add "*or parts of states*."

Likewise, in the appendix to this volume, page 471, near the foot, read "*custom of Kent*," instead of "*custom of Kent*." In page 507, of this volume, the reference respecting *trays*, ought to be to the *second* instead of the *first* volume. There is in Louisville, a manuscript copy of the act establishing Louisville, in which James Sullivan is named a trustee: he is not named in the printed act from which I copied, but I am inclined to think the manuscript is right.

The reader will please likewise to attend to the errata of the first and second volumes, the use of which is not superseded by this table.

